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LEGAL ASPECTS OF TEXTBOOK SELECTION AS  
RELATED TO THE PUBLIC SCHOOLS.

THE UNIVERSITY OF NORTH CAROLINA AT  
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LEGAL ASPECTS OF TEXTBOOK SELECTION  
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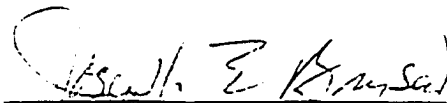
By

Charles T. Gardner

A Dissertation Submitted to  
the Faculty of the Graduate School at  
The University of North Carolina at Greensboro  
in Partial Fulfillment  
of the Requirements for the Degree  
Doctor of Education

Greensboro  
1978

Approved by

A handwritten signature in dark ink, appearing to read "William E. Ramsey", is written over a horizontal line.

Dissertation Advisor

## APPROVAL PAGE

This dissertation has been approved by the following committee of the Faculty of the Graduate School at the University of North Carolina at Greensboro.

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**GARDNER, Charles T.      Legal Aspects of Textbook Selection as Related to the Public Schools (1978)**

**Directed by: Dr. Joseph E. Bryson.      Pp. 261.**

The procedures employed to select textbooks are of major interest to school officials and to the public served by such officials. The interests and concerns are based upon the importance textbooks have in the educational process. This dissertation provides a comprehensive review of how textbooks are selected and the legal ramifications of the selection process. The intentions of this study are not to advocate how textbooks should be adopted or what individuals should have selective powers but rather to establish a legal basis for textbook selection from the statutory decrees of the states and the opinions of the courts relating to the legality of adoptive procedures.

Data and information for this study were obtained through an analysis of the following materials:

1. Current literature pertaining to textbooks and selection;
2. The United States Constitution, state constitutions, the governing statutes of the 50 states and the District of Columbia, and various rules and regulations relating to how textbooks are selected, and
3. Selected Federal and state court cases dealing with textbook selection.

Legal precedents and trends relating to the textbook selection process were identified from the review.

The purpose of the research was to provide school administrators, teachers, parents, and students with a comprehensive guide to textbook selection that includes both educational and legal issues involved in the present procedures of textbook adoption. Reviewed

in the study are legal questions related to how textbooks are chosen for use in the public schools and a projection of possible future court actions in regard to the legal direction of textbook selection. The legal precedents and trends may serve as an added insight in studying the present and future procedures used to select textbooks.

Just as educational methods and thinking are subject to change, state statutes and interpretations of the courts are constantly being revised and reevaluated. The legal precedents and trends that are advanced in this study are founded in present conditions and should be regarded as a conjecture based upon certain inclinations.

With the increased number of textbooks in use, the ever-present possibility of confrontations and the volatile issues involved, the procedures employed to select textbooks are constantly being evaluated by various segments of society. This dissertation provides an added source of information to the individuals involved in the adopting process and to other individuals who are directly affected by the textbooks that are selected. Through an analysis of current literature, statutory decrees, and legal interpretations relating to textbook adoption, a clearer understanding of the legal aspects of textbook selection can be realized.

## ACKNOWLEDGMENTS

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## TABLE OF CONTENTS

	Page
APPROVAL PAGE .....	ii
ACKNOWLEDGMENTS .....	iii
CHAPTER	
I. INTRODUCTION .....	1
Statement of the Problem .....	2
Questions to be Answered .....	3
Scope of the Study .....	4
Methods, Procedures, and Sources of Information .....	4
Definition of Terms .....	5
Significance of the Study .....	6
Administrators' Perspective .....	7
Teachers' Perspective .....	8
Parents' Perspective .....	9
Students' Perspective .....	10
Summation .....	11
Design of the Study .....	11
II. REVIEW OF RELATED LITERATURE .....	13
Overview .....	13
Textbook Selection and the Law .....	14
Censorship and Textbooks .....	19
The Treatment of Ethnic Minorities and Women in Textbooks .....	27
The Textbook Selection Process .....	36
Summary .....	43
III. LEGISLATIVE PROVISIONS FOR TEXTBOOK SELECTION .....	47
Overview .....	47
The Constitution of the United States .....	49
Textbook Selection Provisions of the Individual States .....	50
Alabama .....	50
Alaska .....	56
Arizona .....	57

Arkansas .....	61
California .....	68
Colorado .....	75
Connecticut .....	76
Delaware .....	77
District of Columbia .....	79
Florida .....	81
Georgia .....	88
Hawaii .....	90
Idaho .....	91
Illinois .....	94
Indiana .....	97
Iowa .....	101
Kansas .....	102
Kentucky .....	103
Louisiana .....	107
Maine .....	109
Maryland .....	110
Massachusetts .....	112
Michigan .....	113
Minnesota .....	116
Mississippi .....	118
Missouri .....	121
Montana .....	123
Nebraska .....	125
Nevada .....	125
New Hampshire .....	127
New Jersey .....	127
New Mexico .....	128
New York .....	130
North Carolina .....	133
North Dakota .....	137
Ohio .....	139
Oklahoma .....	140
Oregon .....	143
Pennsylvania .....	148
Rhode Island .....	149
South Carolina .....	150
South Dakota .....	159
Tennessee .....	160
Texas .....	163
Utah .....	171
Vermont .....	174
Virginia .....	174
Washington .....	177

CHAPTER	Page
West Virginia .....	178
Wisconsin .....	181
Wyoming .....	182
Summary .....	184
<b>IV. LEGAL ASPECTS OF TEXTBOOK SELECTION .....</b>	<b>186</b>
Overview .....	186
Organization of Cases Selected for Review .....	188
Selected Court Cases Regarding Textbook Selection and the Law .....	195
Selected Court Cases Regarding Censorship and Textbooks .....	204
Selected Court Cases Regarding the Treatment of Minorities in Textbooks .....	218
Selected Court Cases Regarding the Textbook Selection Process .....	222
Summary .....	238
<b>V. SUMMARY, CONCLUSIONS, AND FUTURE TRENDS     IN TEXTBOOK SELECTION .....</b>	<b>239</b>
Concluding Statement .....	247
<b>BIBLIOGRAPHY .....</b>	<b>248</b>

## Chapter I

### INTRODUCTION

Schooling is the process by which society has made a concerted effort to educate its young for living today and in the future. Many tools are employed in the schooling process. Through three centuries of American public education, textbooks have been considered one of the primary ingredients necessary for effective intellectual development. The textbook is the foundation of every curriculum. To an overwhelming degree, it determines what will be taught and when.

Generally, textbooks that are used by the schools of the United States reflect the social values and essential priorities of this nation. Changes that occur in society are reflected in future textbook content. The representation of minorities during the past ten years in textbooks has been an area of extensive reevaluation. This reevaluation resulted in recent text adoptions which portray the minority Americans in a different light than in the past. The rise of sexism in our society has also been reflected in current textbook adoptions. The traditional role of the woman as mother, nurse, and teacher in old adopted texts has been expanded to include a variety of occupations without the traditional stereotype that has long been associated with the female gender.

The school text of today is an outstanding product from the publishing world. Brilliant pictorial layouts, extensive regard for detail in journalism, and a competitive market among publishers have afforded schools throughout the nation with distinct choices of quality products to assist the teacher in the schooling process. Increased concerns with durability and reliability have made textbooks a bargain in the educational market place. The use of textbooks dates back more than 300 years to the days of the New England

Primer written by Benjamin Harris sometime between 1687 and 1690. This uniformly accepted textbook hardly resembles books used in our modern society; however, its function was the same — to help children learn.

The impact of textbooks on American schools and society as a whole has been extensive and will continue to be so. Because textbooks are concrete objects, the general public views the school by the books brought home by its children. Opinions, discussions, and conflicts arise as individuals differ in their perspective as to what should be taught in the public schools. When conflicting values and attitudes in curriculum surface, textbooks usually become prime targets for criticism. Thus evolve legal challenges and codes of conduct in the textbook selection process. Hopefully, this study will present an overall view of the operation involved in selecting textbooks and its relationship to the law.

## STATEMENT OF THE PROBLEM

Textbook selection has evolved into a major concern of schools throughout the United States. Much time and effort is expended by many individuals in deciding which texts shall be used. What is taught and to a large degree what is learned are directly related to the decisions made by these individuals.

The process of textbook selection is not a clear and precisely-defined method that is uniform throughout the United States. Since education has been deemed a function of each individual state, the procedure employed to select textbooks has either been on a state-wide or local basis. Administrators, educators, parents, and students need to be aware of the process by which textbooks are selected and the legal ramifications. With this in mind, there exists a need for examining the legal aspects of textbook selection as



related to the public schools. All four of the aforementioned groups vitally need appropriate information in order to best judge which type(s) of textbooks should be used in the public schools.

### QUESTIONS TO BE ANSWERED

The major purpose of this study is the development of practical, legal guidelines for textbook selection at the disposal of administrators, educators, parents, and students. Below are listed several key questions to resolve in order for the legal guidelines to be developed.

1. What are each state's provisions in regard to textbook selection as defined by the state's constitution and governing statutes?
2. What are the legal implications of textbook selection as defined by the constitution and governing statutes of each state?
3. What are the legal decisions of Federal and state courts in regard to textbook selection?
4. What are the legal interpretations of court decisions in regard to textbook selection?
5. What are the trends or future directions of the textbook selection process based upon these court decisions?

## SCOPE OF THE STUDY

This is a descriptive and an historical study of the legal ramifications in the textbook selection process of the public schools in the United States. The research describes each state's provisions for textbook selection and litigations that have evolved as a result. The analysis of each state's constitution and governing statutes is restricted to the textbook selection process, and only court decisions concerned with textbook selection are reviewed. Most of the court challenges to textbook selection processes have centered around statutory requirements for textbook selection, censorship and/or academic freedom, representation of minorities in the texts used in the public schools, and religious issues. This research will deal primarily with these areas of concern and will focus upon litigated challenges in the selection process.

The researcher will not attempt to make value judgment as to the moral and ethical nature of these challenges. Instead, a clear and precise view of each case will be presented. Although the selection procedures of several states seem somewhat archaic, each state's provisions for textbook selection will be presented in an objective manner.

## METHODS, PROCEDURES, AND SOURCES OF INFORMATION

The basic research technique of this descriptive and historical research study was to examine and analyze the available references concerning the legal aspects of textbook selection. To determine if a need for such research existed, Dissertation Abstracts was searched for related topics. The Readers' Guide to Periodical Literature, Education Index, and Index to Legal Periodicals were also searched in order to locate related journal and magazine articles.

Each state's constitution and governing statutes were reviewed for information concerned with the textbook selection process. Through the use of the Corpus Juris Secundum, American Jurisprudence, the National Reporter System, and the American Digest System, Federal and state court cases were located. More recent court cases were located by reviewing case summaries in the 1976 and 1977 issues of the NOLPE School Law Reporter.

The Encyclopedia of Educational Research, various school law books, and a review of related literature obtained through a computer search from the Education Resources Information Center (ERIC) provided general research summaries.

Individual state provisions for textbook selection were read and placed in alphabetical order. Court decisions were divided into headings of Federal and state and were categorized to reflect various legal aspects of textbook selection.

## DEFINITION OF TERMS

Selective terms which will be used in this study are defined as follows.

Bias – A deviation from a normal perspective or outlook.

Case Law – Law established by the interpretations by various courts pertaining to rights or privileges granted by constitutional law or governing statutes.

Censorship – Exclusion from use as an instructional device in a public school or schools.

Constitutional Law – Rights and privileges granted or given to each citizen of a state by the constitution of that state.

Governing or State Statutes – Laws enacted by the legislature of a state within the legal framework of that state's constitution.

Minorities – A population differing from others by a distinguishable characteristic and subject to differential treatment.

Textbooks – Materials designed for use by students as required sources of information.

## SIGNIFICANCE OF THE STUDY

The process of textbook selection relates to the very foundation of the educational process within the United States. Determining the materials used by children has a direct relationship with what is ultimately learned. As stated in the October, 1964 issue of School Management, “textbooks are still the single most important teaching tool.”<sup>1</sup> The selection of textbooks ranks second in importance only to the selection of individuals to teach.<sup>2</sup>

Textbooks are a determinant factor of the overall schooling process. Charles Judd, over a half century ago, stated “there is no influence in American schools which does more to determine what is taught to pupils than does the textbook.”<sup>3</sup> Once a text is selected, it usually is employed for at least a five-year period during which time a great number of youngsters will have been exposed to its contents – be they valid or distorted.

According to Jensen, the structure and contents of textbooks change to conform to the needs of the successive periods of social development.<sup>4</sup> Which texts are selected are

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<sup>1</sup>“Is Your District Using the Right Textbooks?,” School Management 8 (October 1964): 80.

<sup>2</sup>Ibid.

<sup>3</sup>Samuel Brodbelt, “Using Mathematical Criteria for Selecting Social Studies Textbooks,” Clearing House, April 1972, p. 487.

<sup>4</sup>Frank A. Jensen, Current Procedures in Selecting Textbooks (Philadelphia: J. B. Lippincott Company, 1931), p. 7.

generally reflective of the overall values of society. Early text adoptions were religious-oriented and portrayed colonial America's concern with religious training. The advent of a changing society brought different criteria by which books were selected. As society became concerned with industrialization, textbooks also became concerned with the needs of that society. Such is true today of which texts are used.

This study has particular application to four groups within our society. The selection process directly affects administrators, teachers, parents, and students. Administrators view textbook selection from a perspective of finance, feasibility, and functionality. Teachers traditionally have viewed textbook selection as a vital part of their instructional program. Essentially, parents form impressions of the schools by those books used by their children. Which texts are selected determine to a great extent their impression of exactly what is occurring in the schools. Students are ultimately the recipients of the good or bad textbook selection. The textbooks that are chosen are a major factor in the attitude of each student toward school and, to a certain extent, the success which that student enjoys in the schooling process.

### Administrators' Perspective

School administrators have a multitude of functions and duties to perform. Their role in the textbook selection process requires a concern for society and an interest in those directly involved in education. To preclude their judgment of which texts should be used would deny a reliable resource in the total selection procedure. Subject area supervisors and other educational specialists give expertise as to which textbooks best present what should be taught.

Interpretation of the schooling process to the public, to a certain degree, resides with school administrators. The involvement that administrators have in the textbook selection process is reflected in knowledge of what is occurring in the public schools and how well the administrators perform duties as instructional leaders.

### Teachers' Perspective

Perhaps those individuals who are involved in the day-to-day occurrences in the classroom are most sensitive to the relative merits of various texts. Judgments made by teachers concerning which texts to adopt are reflective of their own individual classroom situations as to what will or will not work. Research studies have shown that teachers' biases for or against the texts they use have a direct influence upon the degree of academic achievement of their students.<sup>5</sup> Teachers should know from direct contact with students which texts will best be utilized by students and be reflective of the total school curriculum.

In the February, 1972 edition of Today's Education, E. B. Palmer stated that the majority of members of a textbook selection committee should be classroom teachers.<sup>6</sup> Their insight and expertise lend a certain degree of functionality to the selection process.

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<sup>5</sup>Roland B. Kimball, "Recent Research in Curriculum," paper presented at the 6th Annual Convocation of N. E. Educational Research Association, Ellenville, N. Y., 30 October 1975.

<sup>6</sup>E. B. Palmer, "Selecting Instructional Materials," Today's Education 61 (February 1972): 53.

## Parents' Perspective

Parents are vitally interested in the quality of education which children receive. Textbooks are the most accessible information parents have for assessing the instructional program of a school.

Parental attacks against schools and textbooks reflect a general social trend of our society. Occurrences such as wars, economic depressions, and scandals in government directly effect parental beliefs concerning schools. Schools have been a change agent in our society; however, factors inherent in society bring about changes in the educational process.<sup>7</sup>

Attacks upon the schools and the attitude of society can best be represented by various court challenges which illustrate conditions that exist within society itself. A conservative challenge to the teaching of German in the post-World War I era was demonstrated in Meyer v. Nebraska in 1923.<sup>8</sup> Strict loyalty restrictions for teachers were common after the Korean War as was demonstrated by Adler v. Board of Education in 1952.<sup>9</sup> In more recent times, freedom to speak in opposition to involvement in the Vietnam War was demonstrated in the Tinker v. Des Moines case in 1968.<sup>10</sup> Academic freedom in dealing with words and works considered obscene was brought out in Brubaker v. Board of

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<sup>7</sup>I. James Quillen, "The Curriculum and the Attacks on the Public Schools," in Public Education in America, ed. George Z. F. Bereday and Luigi Volpicelli (New York: Harper and Brothers, 1958), p. 121.

<sup>8</sup>Meyer v. Nebraska, 262 U. S. 390, 43 S. Ct. 625 (1923).

<sup>9</sup>Adler v. Board of Education of City of New York, 342 U. S. 485, 96 L. Ed. 517, 72 S. Ct. 380 (1952).

<sup>10</sup>Tinker v. Des Moines Independent Community School District, 393 U. S. 503, 21 L. Ed. 2d 731, 89 S. Ct. 733 (1969).

Education, District 149, Cook County, Illinois, 1974.<sup>11</sup> All of these litigated cases clearly demonstrate parental concern with what occurs within the confines of the classroom and can be expounded to include which textbooks are selected for instructional purposes.

In regard to academic freedom, Robert Hogan of the National Council of Teachers best summarized the pressures on textbook publishers and school officials when he said, "We have exercised academic freedom faster than we have prepared people to accept it."<sup>12</sup>

### Students' Perspective

Student attitudes toward which textbooks are selected represent basically how successful the texts are as instructional devices. Student reaction to textbooks may or may not be self-conscious but is easily observed and measured. Certain texts are popular and successful with children while others are dreaded and avoided. Learning should be an enjoyable process, and those textbooks which promote a sense of futility and discontent among students heighten the physical and mental dropout rates of students. Student involvement in the textbook selection process heightens motivation and contributes to an increased sense of pride in the school.<sup>13</sup>

Textbooks are adopted for students. Including students in important decision-making functions such as textbook selection heightens their energies and commitment to

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<sup>11</sup>Brubaker v. Board of Education, 502 F. 2d 973 (Seventh Cir., 1974), p. 979.

<sup>12</sup>Mike Bowler, "The Selling of the Three 'R's," Baltimore Sun, 7 October 1976, p. A6.

<sup>13</sup>Daniel J. Dieterich, "Student Unrest and Participation in Curriculum Planning," English Journal 61 (March 1972): 445.



the educational process.<sup>14</sup> By allowing student involvement, those directly concerned with using textbooks give an added important dimension to learning.

### Summation

By reviewing the perspectives of administrators, teachers, parents, and students in the legal aspects of textbook selection, an increased awareness of which books best meet the needs of all can be concluded. By clearly defining the legal ramifications involved in the selection process, a greater degree of stability and appropriateness will develop. All four groups' interests and desires should be prerequisite to the actual selection procedure.

If public education is to be truly public, all four groups must be involved in the selection process in an equitable manner. By having an increased sense of knowledge of the legal aspects of textbook selection, greater benefit can be received by those who administer, implement, support, and benefit from the schooling process.

## DESIGN OF THE STUDY

The remainder of this study is divided into four major parts. Chapter II contains a Review of Related Literature. The Review will be concentrated into four differing categories:

1. Textbook Selection and the Law,
2. Censorship and Textbooks,

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<sup>14</sup>Ibid.

3. The Treatment of Ethnic Minorities and Women in Textbooks, and
4. The Textbook Selection Process.

Chapter III will concentrate on the United States Constitution, constitutions and governing statutes of the 50 states and the District of Columbia, and various state rules and regulations as related to the textbook selection process. A review of each state's provisions for textbook selection will be presented to give insight to the actual process involved in deciding which texts will be used.

Chapter IV will contain listings and discussions of selected court cases that deal with textbooks and the selection process. The court cases will be analyzed in four topic areas:

1. Textbook Selection and the Law,
2. Censorship and Textbooks,
3. The Treatment of Minorities in Textbooks, and
4. The Textbook Selection Process.

Both Federal and state cases are reviewed. The legal aspects of each case will be discussed in context to the effect upon textbook selection.

Chapter V will contain a summary of the information obtained from the Review of Related Literature, an examination of each state's selection procedure from a legal basis, and an analysis of the court decisions related to the textbook selection process. The questions asked in the introductory part of the study are reviewed and answered. An attempt will also be made to predict possible future directions in the textbook selection process as related to the law.

Chapter II

REVIEW OF RELATED LITERATURE

OVERVIEW

Textbooks, in one form or another, have been in existence in the United States as long as schools themselves. From the days of the three 'R's to the present use of computer technology for educational instruction, textbooks have been the primary source of methodology in teaching. Because of this historical precedent, the administrative procedure for textbook selection has been a source of great concern for many individuals. Much has been written about schools and what is taught. The textbooks that are employed for instructional purposes have been and will continue to be a debated issue in literature.

According to Elson in Guardians of Tradition, educators are charged not only with duties of imparting skills to children but also with training future citizens in character with proper principles.<sup>1</sup> Educators cannot be viewed as being "value-neutral" by themselves. Historically, the selection of texts has been a primary instrument in the socialization process of children in the public schools both from religious and political viewpoints.<sup>2</sup> To this end, the textbook selection process takes many different directions in generally deciding what should be taught and the most appropriate means to convey information to students. Another major concern is how all facets of the American society are represented generally in the schooling process and specifically within the contents of textbooks.

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<sup>1</sup>Ruth Elson, Guardians of Tradition, quoted in David L. Kirp and Mark G. Yudof, Educational Policy and the Law: Cases and Materials (Berkeley, California: McCutchan Publishing Company, 1974), p. 114.

<sup>2</sup>Ibid.

The scope and character of the legal aspects of textbook selection take many forms in the literature of past generations and today's society. Almost all aspects of the selection process may become legalistic in nature. Omissions and unwanted inclusions in textbooks dealing with varying segments of the American society develop into challenges by the citizenry that eventually will be reported in literature. To cover each and every concern that has been written related to the selection of textbooks in this research would be virtually impossible. Therefore, this study is concerned with the legal ramifications of the selection process.

For reasons of clarity, the related research is reported by general topics as follows:

1. Textbook selection and the law,
2. Censorship and textbooks,
3. The treatment of ethnic minorities and women in textbooks, and
4. The textbook selection process.

All four have a definite correlation to the legal aspects of textbook selection. The information presented gives added insight into how the selection process has evolved into the present-day format.

## TEXTBOOK SELECTION AND THE LAW

The Constitution of the United States makes no reference directly to education. However, in the Preamble of the Constitution, a basis is stated that the aforementioned document was written for varying reasons, two of which are to provide for the common defense and to promote the general welfare.<sup>3</sup> Education as such is an attempt by the

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<sup>3</sup>U. S., Constitution, Preamble.

American society to provide for the common defense and to promote the general welfare of its people. Moreover, "provide for the common defence, promote the general Welfare" might be considered as the scope and limitations of the public school curriculum.

The Tenth Amendment to the Constitution divests the Federal government of certain powers and responsibilities.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.<sup>4</sup>

By decreeing that all powers not in the Constitution be delegated to the States, education becomes a function of the States and their legislative bodies. As stated by Reutter in The Law of Public Education, the legislature of each individual state has plenary power over the curriculum of the public schools.<sup>5</sup> Peterson refers to Corpus Juris Secundum in recognizing the authority of the state legislatures in educational matters including direction and control of the instructional program of pupils.<sup>6</sup>

Subject to constitutional provisions, the power of the legislature as to the management, operation, and regulation of school districts is plenary: local regulations and charter provisions as to school matters must conform to constitutional and statutory provisions.<sup>7</sup>

Other noted authors in the area of school law support the contention that control of education is deemed to be a power and responsibility of the state. Bolmeier states that

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<sup>4</sup>U. S., Constitution, amend. X.

<sup>5</sup>E. Edmund Reutter, Jr. and Robert R. Hamilton, The Law of Public Education (Mineola, New York: Foundation Press, Inc., 1970), p. 109.

<sup>6</sup>LeRoy J. Peterson, Richard A. Rossmiller, and Marlin M. Volz, The Law and Public School Operation (New York: Harper and Row, 1969), p. 375.

<sup>7</sup>78 C. J. S., Schools and School Districts, § 83(a).

the basic authority to govern public schools is within the confines of the various state constitutions.<sup>8</sup> Hamilton and Mort support this assertion.<sup>9</sup> Fulbright and Bolmeier have indicated that the constitution of almost every state charges the various state legislatures with the responsibility and authority to establish and control public schools.<sup>10</sup>

Determining what type of materials to be used in the educational process is a function of the legislature as well. According to Bolmeier, it is generally agreed that within the confines of constitutional limitations, the legislature is empowered to determine the type and contents of curricula and the matter of their control.<sup>11</sup> Drury and Ray advance the idea that each state has the legal right to require that specified subjects essential to good citizenship be taught and that nothing be taught which is contrary to the general welfare of the public.<sup>12</sup>

The power over curriculum can be divested from the legislature to local boards of education. As stated by Gauerke, the state's power over curriculum can be manifested in two areas: (1) the authority exercised by the state legislature and its agencies, and

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<sup>8</sup>Edward C. Bolmeier, "Legal Aspects of the Curriculum and the Extracurriculum," The Bulletin of the National Association of Secondary School Principals 49 (March 1965): 128-42.

<sup>9</sup>Robert R. Hamilton and Paul R. Mort, The Law and Public Education, With Cases (Chicago: Foundation Press, Inc., 1941), p. 94.

<sup>10</sup>Evelyn R. Fulbright and Edward C. Bolmeier, Courts and the Curriculum (Cincinnati: W. H. Anderson Company, 1964), p. 4.

<sup>11</sup>Edward C. Bolmeier, Legal Limits of Authority Over the Pupil (Charlottesville, Virginia: Michie Company, 1970), p. 46.

<sup>12</sup>Robert L. Drury and Kenneth C. Ray, Essentials of School Law (New York: Meredith Publishing Company, 1967), p. 37.

(2) the authority exercised by local boards of education.<sup>13</sup> The power of local boards of education is granted by governing statutes imposed by the legislature and is subject completely to limitations set forth by each state's legislative body.<sup>14</sup>

According to Reutter, all states have varying statutes relating to textbooks in the public schools. The legal right to prescribe textbooks has been sustained uniformly as an aspect of the state's basic control over education.<sup>15</sup> In exercising this basic control over education, legislatures have enacted statutes to prescribe textbooks to be used as instructional devices. According to Drury, there is a lack of uniformity in the statutory provisions of textbook selection<sup>16</sup> as will be confirmed in Chapter III. Policies concerning textbook selection are not an established pattern; a list of alternative procedures is employed in a cross-section analysis of the various states. These alternatives found in the general statutes of several states are:

1. State boards or textbook commissions may be given authority to enact rules and regulations concerning the curriculum, textbooks, and related matter.
2. State agencies may be authorized to prescribe one book for each school subject. Local authorities are then obliged to use the prescribed book. State agencies furnish these prescribed books to local schools in some states.
3. State agencies may be authorized to adopt multiple lists of approved textbooks from which local authorities may choose. In a few instances, local officials may select books from these lists and requisition them from a state agency. The state agency then furnishes the book selected to the local schools at state expense.
4. State agencies may also be authorized to maintain lists of supplementary and reference books or other instructional materials.

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<sup>13</sup>Warren E. Gauerke, What Educators Should Know About School Law (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1968), p. 52.

<sup>14</sup>Robert L. Drury and Kenneth C. Ray, Principles of School Law, With Cases (New York: Meredith Publishing Company, 1965), pp. 9-10.

<sup>15</sup>E. Edmund Reutter, Jr., School and the Law, 2nd ed. (Dobbs Ferry, New York: Oceana Publications, Inc., 1964), p. 44.

<sup>16</sup>Robert L. Drury, Law and the School Superintendent (Cincinnati: W. H. Anderson Company, 1958), p. 200.

5. If there are no state adopted lists of textbooks or other materials, local officials may be authorized by statute to make their own adoption. In such cases, statutory provisions may limit the exercise of this local power by making certain stipulations, such as those which specify the term of adoption period.
6. Local authorities may be granted power to buy books and to provide them free to some or all pupils, or to rent books to pupils.
7. In certain states publishers are required to list their textbooks and the prices for them with state officials. Local school authorities in these cases are then permitted to select or purchase books from the composite list of all books submitted by various publishers.
8. Specific authority is granted in a number of states for local school officials to sell books and supplies to pupils.
9. School officials at all levels may be, and commonly are, forbidden from acting as agents of suppliers and textbook publishers.
10. Strict provisions against collusion or giving or receiving bribes in connection with selection and procuring instructional materials are included in the statutes of a majority of states. Accompanying statutes usually provide penalties for violations.<sup>17</sup>

In general, statutes pertaining to textbooks by various states have certain prescriptions in common. The laws relating to such items establish certain guidelines and include instruction in specified areas. Common items that exist among statutes are provisions for material to be included in textbooks (e. g., the harmful effects of alcohol and narcotics), provisions for availability of proscribed material (e. g., sectarian doctrines), and provisions for conditions which allow changes in textbooks (e. g., generally, not more often than every five years).<sup>18</sup>

Education, in general, derives its heritage from the idea that learning is needed. Professor Newton Edwards best summarized each state's role in the following statement: "The school exists as a state institution because the very existence of civil society demands it."<sup>19</sup>

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<sup>17</sup>Ibid., pp. 200-02.

<sup>18</sup>Robert R. Hamilton and E. Edmund Reutter, Jr., Legal Aspects of School Board Operation (New York: Bureau of Publications, Teachers College, Columbia University, 1958), p. 39.

<sup>19</sup>Newton Edwards, The Courts and the Public Schools: The Legal Basis of School Organization and Administration (Chicago: University of Chicago Press, 1971), p. 24.



The textbook selection process is basically inherent in the total concept of each individual state's right and authority to control education. Laws that exist concerning education are the products of successive generations and the attempts to enhance each youth's chances of educational advancement. As stated by Nolte, schools through democratic evolution changed and flourished and, finally, became the complex, highly organized, nationwide system of education we know today.<sup>20</sup>

### CENSORSHIP AND TEXTBOOKS

Censorship of textbooks has long been a concern of educators and the American public. According to Parker, it remains true that the American people ultimately control education; but with the advent of the schools being forced as agents of social change, more community groups attempt to use the schools for their own ends.<sup>21</sup> The degree to which community groups and outside agencies exert pressure on the academic community often determines what is allowable as instructional devices.

The trend toward censorship of textbooks now being used is not localized. Nyla Ahrens, in a nationwide survey, has revealed that many of the same books, no matter what the state, have come under fire because of objectionable material.<sup>22</sup> The struggle for

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<sup>20</sup>Chester Nolte, Guide to School Law (West Nyack, New York: Parker Publishing Company, Inc., 1969), p. 156.

<sup>21</sup>Franklin Parker, The Battle of the Books: Kanawha County (Bloomington, Indiana: Phi Delta Kappa Educational Foundation, 1975), p. 31.

<sup>22</sup>Nyla Ahrens, "Censorship and the Teacher of English: A Questionnaire Survey of a Selected Sample of Secondary School Teachers of English" (Ed. D. dissertation, Teachers College, Columbia University, 1965), p. 123.

academic freedom often erupts into volatile situations that involve many issues unrelated to which books are to be used in the classroom.<sup>23</sup>

Censorship attempts of textbooks will result in one of three possible solutions in most cases:

1. The pressure group asserting influence will lose its influence, and the textbooks in question will remain a part of the total school instructional program although compromises do sometimes occur as in the Kanawha County School solution.<sup>24</sup>
2. Censors are able to exert enough pressure to have educators ban the use of controversial texts themselves as was illustrated by Castagna in "Courage and Cowardice,"<sup>25</sup> Fiske in Book Selection and Censorship,<sup>26</sup> and Blanshard in The Right to Read: The Battle Against Censorship.<sup>27</sup>
3. The conflict that arises will become a litigated issue that will ultimately be decided in a court of law.

Why do groups exert pressure to have certain books banned? According to Donelson, for years Americans have maintained a somewhat uncomfortable, ambivalent feeling

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<sup>23</sup>Lester L. Faigley, "What Happened in Kanawha County," English Journal 64 (May 1975): 7.

<sup>24</sup>*Ibid.*, p. 9.

<sup>25</sup>Edwin Castagna, "Courage and Cowardice," Library Journal 88 (February 1963): 501-06.

<sup>26</sup>Marjorie Fiske, Book Selection and Censorship (Los Angeles: University of California Press, 1959), p. 48.

<sup>27</sup>Paul Blanshard, The Right to Read: The Battle Against Censorship (Boston: Beacon Press, 1956), p. 97.

about schools. There is an almost superstitious reverence that somehow education is good for everyone; however, this is mixed with a fear of intellectualism and a dread of teachers.<sup>28</sup> As advanced by Bach, censorship aims at reserving freedom in the United States through reinforcing what proponents regard as true values and beliefs.<sup>29</sup> The urge to protect the young from evil is an understandable yet futile drive.<sup>30</sup> For the most part, people who would restrict the availability of materials in the schools are well meaning and seem to believe that it would be best not to expose students to materials that recognize unsavory aspects of society.<sup>31</sup> Glatthorn believes that censorship is only one battle of an ideological warfare in the United States. He advances the idea that the working-class people of middle America are convinced that they are a beleaguered minority which has been systematically attacked for the past 15 years.<sup>32</sup> Moreover, Glatthorn contends that censorship becomes a form of scapegoating with schools and teachers as handy and defenseless targets.<sup>33</sup> Censorship, therefore, has been held out as a convenient and simple weapon that is readily available to those who feel deprived of an effective voice through democratic means.<sup>34</sup>

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<sup>28</sup>Kenneth L. Donelson, "Censorship in the 1970's: Some Ways to Handle It When It Comes (And It Will)," English Journal 63 (February 1974): 48.

<sup>29</sup>Harry Bach, "Censorship of Library Books and Textbooks in American Schools," Journal of Secondary Education 40 (January 1965): 5.

<sup>30</sup>Kenneth L. Donelson, "White Walls and High Windows: Some Contemporary Censorship Problems," English Journal 61 (November 1972): 1192.

<sup>31</sup>Judith F. Krug, "Intellectual Freedom: The Struggle Continues," Education Digest 38 (January 1973): 47.

<sup>32</sup>Allan A. Glatthorn, "Censorship and the Classroom Teacher," English Journal 66 (February 1977): 12.

<sup>33</sup>*Ibid.*

<sup>34</sup>Bach, *op. cit.*, p. 7.

School patrons generally see the school as a last bastion of community control and the textbooks that are selected as its ultimate symbol.<sup>35</sup> The advocates of censorship regard it as a means by which to prevent debasement of the individual virtues, the cultural standards, and the common security of democracy.<sup>36</sup>

The next logical question to ask is which textbooks become suspect as being unacceptable as teaching tools? Donelson, editor of The Students Right to Read, has listed eight categories that usually come under attack as being unacceptable and should be banned from use in the schools.<sup>37</sup> The categories are:

1. Texts that are sex-oriented;
2. Texts that are an attack on the American way of life;
3. Texts that portray the United States in an unfavorable manner in wars and conflicts;
4. Texts dealing with religious issues that are either unchristian or that violate the separation of church and state doctrine;
5. Texts based on studies of society and racial matters;
6. Texts that use language which is considered profane or obscene;
7. Texts that contain descriptions of drug-related occurrences in society; and
8. Texts that portray adolescents who exhibit inappropriate behavior.<sup>38</sup>

According to Krug, books are chosen by considering students' reading ability, mental and emotional maturity, and the values which students may derive from the reading.

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<sup>35</sup>Parker, op. cit., p. 33.

<sup>36</sup>Walter Gellhorn, Individual Freedom and Governmental Restraint (Baton Rouge: Louisiana State University Press, 1956), p. 57.

<sup>37</sup>Donelson, "Censorship in the 1970's . . ." op. cit., p. 48.

<sup>38</sup>Ibid.

Krug further states that censorship may leave students with an inadequate education. At the least, censorship leaves students with a somewhat distorted view of society.<sup>39</sup> David H. Ost, in the American Biology Teacher, maintains that an important step in the production of a controlled populace is the usurping of academic responsibility and the denial of academic freedom.<sup>40</sup> In the National Education Association's Inquiry Report, basic questions were asked concerning the purpose and content of education.

Shall the purpose of education be confined to the transmission of basic skills and of a preconceived system of facts, carefully screened to ensure against cultural shock or against any intellectual awakening that might cause students to question the precepts and traditions of their nurture?

Shall the purpose of education be to instill in students a passive submission to coercive authority, a blind acceptance of the chauvinistic dogma that this nation has never betrayed its own constitutional ideals?

Shall the purpose of the schools be to protect students from the harsh realities of our society and deny them knowledge of its rich diversity of ideas, cultures, races, ethnic groups, and life styles?

Shall the content of public education be determined by the parents of each community to ensure against violation of prevailing community and parental values? And if so, which parents and whose values shall prevail?

Shall the entire matter of educational programs and materials be submitted to a popular vote in order to determine the prevailing value system? What then shall be the rights of those whose values lost out at the polling place? What then would be the need for an elected board of education -- or for the professional knowledge of educators? What then would be left of the right of students to learn?<sup>41</sup>

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<sup>39</sup>Krug, op. cit., p. 48.

<sup>40</sup>William V. Mayer et al., "Statements by Scientists in the California Textbook Dispute," American Biology Teacher 39 (October 1972): 413.

<sup>41</sup>National Education Association, Inquiry Report: Kanawha County, West Virginia; A Textbook Study in Cultural Conflict (Washington, D. C.: National Education Association, February 1975), p. 55.

It was held by the National Education Association panel that the parents of Kanawha County, West Virginia, or elsewhere in the country would not want the educational anarchy that would result if the above propositions were implemented.<sup>42</sup> Full freedom of expression and free access to information are essential parts of the American system of government. If our present form of government is to be of the people, by the people, and for the people, citizens must have full availability of and unrestricted access to information. In order for each individual to know how to accommodate and assimilate the varying points of view, the process must begin in the early stages of life. The so-called dangerous ideas are not fatal to democracy, but rather the suppression of such ideas is dangerous.<sup>43</sup>

Publishers are impelled to deliver materials that are motivating, challenging, and relevant in textbooks. Publishers are acutely aware of the pitfalls and contradictions in preparing materials for the educational marketplace. Censors can and do imperil months of honest editorial labor.<sup>44</sup> In Carpenter's History of American Schoolbooks, textbook writing is somewhat of an agreed-upon task which to a large extent is dependent upon current conditions. However, the factors of unpredictable vagaries and caprices on the part of the public exist.<sup>45</sup> Publishers are aware that an onslaught of criticism against a certain text by a right-wing or minority group can cause a chain reaction among textbook

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<sup>42</sup>Ibid.

<sup>43</sup>Judith F. Krug et al., "Censorship: The Malady Lingers On," Today's Education 65 (March-April 1976): 48.

<sup>44</sup>James J. O'Donnell, "Censorship and the Publishers," Bulletin of the National Association of Secondary School Principals 59 (May 1975): 60.

<sup>45</sup>Charles Carpenter, History of American Schoolbooks (Philadelphia: University of Pennsylvania Press, 1963), p. 278.

selection committees and touch off a drop in sales in many areas.<sup>46</sup> In 1953, the Westchester Conference of the American Library Association and the American Book Publishers Council formulated the Freedom to Read Statement. The Freedom to Read Statement declares:

We believe that free communication is essential to the preservation of a free society and a creative culture. We believe that these pressures towards conformity present the danger of limiting the range and variety of inquiry and expression on which our democracy and our culture depend . . . The freedom to read is guaranteed by the Constitution. Those with faith in free man will stand firm on these constitutional guarantees of essential rights and will exercise the responsibilities that accompany these rights.

We therefore affirm these propositions:

1. It is in the public interest for publishers and librarians to make available the widest diversity of views and expressions, including those which are unorthodox or unpopular with the majority

2. Publishers and librarians do not need to endorse every idea or presentation contained in the books they make available. It would conflict with the public interest for them to establish their own political, moral or aesthetic views as the sole standard for determining what books should be published or circulated

3. It is contrary to the public interest for publishers or librarians to determine the acceptability of a book solely on the basis of the personal history or political affiliations of the author

4. It is not in the public interest to force a reader to accept with any book the prejudgment of a label characterizing the book or author as subversive or dangerous

5. It is the responsibility of publishers and librarians, as guardians of the people's freedom to read, to contest encroachments upon that freedom by individuals or groups seeking to impose their own standards or tastes upon the community at large

6. It is the responsibility of publishers and librarians to give full meaning to the freedom to read by providing books that enrich the quality of thought and expression. By the exercise of this affirmative responsibility, bookmen can demonstrate that the answer to a bad book is a good one, the answer to a bad idea is a good one.<sup>47</sup>

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<sup>46</sup>Jack Nelson and Gene Robert, Jr., The Censors and the Schools (Boston: Little, Brown, and Company, 1963), p. 179.

<sup>47</sup>American Library Association and American Book Publishers Council, Westchester Conference, Freedom to Read Statement, quoted in Bach, op. cit., pp. 11-12.

The use of the Freedom to Read Statement against censorship is based upon the primary principle that "in no case should any book be excluded because of the race or nationality or the political or the religious views of the writer."<sup>48</sup> The Freedom to Read Statement has been very effective in a number of cities in responding to censorship groups.<sup>49</sup>

The duties of publishers relating to textbooks are many. What shall be read and studied has far-reaching effects throughout this country. James J. O'Donnell, Executive Director of Xerox Education Publications, acknowledges that, "publishers have delicate and complex responsibilities when it comes to imparting knowledge to youngsters."<sup>50</sup>

Both positions of proponents of censorship and advocates of academic freedom in the selection of textbooks to use in the classroom are best summarized by the following statements of opposing views. In Social Education, Kris McGough delivered the following statement:

Educators have hidden behind a veil of professionalism for many years, and many parents therefore feel inadequate to the task of reviewing a book. It takes a very gutsy parent to remain unthreatened by forms that say "Are you aware of what the recognized authorities have said about this book?" Perhaps, unwittingly, educators have put parents in a dependency relationship, and they may have to develop an affirmative action program for us. Do you have a textbook battle in your system? Rejoice and be glad — you have healthy parents who are trying to break free.<sup>51</sup>

In issuing a dissenting opinion of the 1972 Supreme Court's refusal to hear arguments concerning the banning of Down These Mean Streets by Piri Thomas, Justice William O. Douglas wrote:

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<sup>48</sup>Ibid., p. 11.

<sup>49</sup>Bach, op. cit., p. 11.

<sup>50</sup>O'Donnell, op. cit., p. 62.

<sup>51</sup>Kris McGough, ed., "Confessions of a Book Burner," Social Education 41 (October 1977): 558.



Are we sending children to school to be educated by the norms of the school board or are we educating our youth to shed the prejudices of the past, to explore all forms of thought, and to find solutions to our world's problems?<sup>52</sup>

## THE TREATMENT OF ETHNIC MINORITIES AND WOMEN IN TEXTBOOKS

The role of ethnic minority groups in textbooks has implications that ultimately extend to individual perceptions by the student of his world and the world around him. According to Pawlikowski, only a few textbooks indicate the pluralistic, interracial, multi-religious character of our population; and evidence of ethnic bias continues to exist.<sup>53</sup> Improper treatment of minorities in textbooks has been and will continue to be a source of litigation concerning textbook adoption procedures.<sup>54</sup> R. L. Simms, writing in Phi Delta Kappan, has stated that the "melting pot" concept of American society has proved largely unworkable and invalid since the American people increasingly recognize and appreciate our tremendously rich and diverse multiethnic backgrounds. Simms continues that, unfortunately, most school curriculum offerings still restrict the cultural experiences

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<sup>52</sup>President's Council, District 25, et. al. v. Community School Board No. 25, et. al., Memorandum Decision No. 72-109, 93 S. Ct. at 309 (1972), Petition Denied November 6, 1972, quoted in Mary Lou White, "Censorship Threat Over Children's Books," The Elementary School Journal 75 (October 1974): 4.

<sup>53</sup>La Mar P. Miller, "Evidence of Ethnic Bias in Instructional Materials," in Eliminating Ethnic Bias in Instructional Materials: Comment and Bibliography, ed. Maxine Dunfee (Washington, D. C.: Association for Supervision and Curriculum Development, 1974), p. 11.

<sup>54</sup>John Anthony Scott, "History Textbook Adoption Procedure Challenged in Mississippi," Inequality in Education 22 (July 1977): 129.

in the school to a single, dominant culture.<sup>55</sup> In classifying minority groups, the basis for controversy mainly centers around the following groups: (1) Black Americans, (2) Mexican-Americans, (3) American Indians, (4) Jews, and (5) Orientals.<sup>56</sup>

In a 1968 opinion poll conducted by Nation's Schools, 41 percent of the administrators polled voiced the opinion that minority groups were inadequately represented in each school district's textbooks; while 27 percent of those polled felt that individual courses or subjects did not adequately represent minority groups.<sup>57</sup> This sampling represents a major concern of administrators in regard to minority representation in the school setting with increased concerns with the portrayal of these minorities in textbooks. In a 1970 study conducted by Michael B. Kane concerning the treatment of minority groups, the following were among the findings:

A vast majority of texts continue to neglect most aspects of black history in Africa between the years 1876 and 1954.

Textbook accounts of the crucifixion continue to be too superficial to dispel misconceptions concerning the role played by Jews. Some texts avoid mentioning the crucifixion altogether, while a few still explicitly link the Jews to the death of Jesus in a way likely to increase anti-Semitic feelings.

The achievements, varied characteristics and current status of Chinese- and Japanese-Americans are still neglected.

There is still virtually no attention paid to the increasing number of America's Spanish-speaking peoples. The Mexican-American has replaced

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<sup>55</sup>R. L. Simms, "Bias in Textbooks: Not Yet Corrected," Phi Delta Kappan 57 (November 1975): 201.

<sup>56</sup>Max Rosenberg, "Criteria for Evaluating the Treatment of Minority Groups in Textbooks and Other Curriculum Materials," Audiovisual Instruction 17 (November 1972): 22.

<sup>57</sup>"Texts Don't Treat Minorities Fairly, Many Schoolmen Say," Nation's Schools 82 (August 1968): 35.

the black man as the "invisible American;" Puerto Ricans fare only slightly better.

References to the Indian in contemporary society are frequently missing and those that do appear rarely give accurate appraisals.<sup>58</sup>

According to Slotkin, since a substantial proportion of school children, especially those in large, industrialized, urban areas, do not fall within the categories of being almost exclusively white, middle-class, Anglo-Saxon or North European in origin, they cannot identify with the image conveyed of our country in present-day textbooks.<sup>59</sup> Allen, in the Journal of Negro Education, reflecting upon a study conducted by the 1968 Achievement Work Project of Tau Omega Chapter of Omega Psi Phi Fraternity, Inc., of Greensboro, North Carolina, states that America has only recently begun to take stock in the role of black Americans in the media and has almost completely ignored black presence in textbooks.<sup>60</sup> Rowland and Hill have stated that approximately ten percent of the children in the United States are Negro, yet the reading materials are peopled almost solely by Caucasians.<sup>61</sup> Larrick has indicated that more than six million nonwhite children are learning to read in books which omit them.<sup>62</sup>

As revealed in a report by the National Advisory Commission on Civil Disorders, only recently have texts featured any Negro personalities. Few books used or courses

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<sup>58</sup>"Gaps in Minority Coverage Revealed in Textbook Survey," Library Journal 95 (September 15, 1970): 2958.

<sup>59</sup>Aaron N. Slotkin, "The Treatment of Minorities in Textbooks," Education Digest 30 (October 1964): 21.

<sup>60</sup>Van S. Allen, "An Analysis of Textbooks Relative to the Treatment of Black Americans," Journal of Negro Education 40 (Spring 1971): 140.

<sup>61</sup>Monroe Rowland and Patricia Hill, "Race, Illustrations and Interest in Materials for Reading and Creative Writing," Journal of Negro Education 34 (Winter 1965): 84.

<sup>62</sup>Nancy Larrick, "The All-White World of Children's Books," Saturday Review, February 16, 1976, p. 63.

offered reflect the harsh realities of life in the black ghetto or show the contributions of Negroes to America's culture and history.<sup>63</sup> The omission of the contributions of black Americans to America's greatness is evident in the continued, unsettled status they experience in American society.<sup>64</sup> Harvey B. Scribner, the Vermont Commissioner of Education, has described texts as being biased and racist that have misinformed and misled students. Commissioner Scribner advocates that a guideline for textbook revisionists be established to allow American history to be a true document of America's growth.<sup>65</sup> According to Bennett, white-oriented texts tend to inject into white Americans a belief in racism, giving white Americans a sense of exclusive identification with this country, although America was built through the efforts of men and women of all races and creeds, not just whites.<sup>66</sup>

Concerns of the Negro community with the treatment of blacks in textbooks have been critical with increased frequency.<sup>67</sup> In a United States House of Representatives committee study on the treatment of minorities in text and library books, a special ad hoc committee on education and labor under the titular chairmanship of Congressman Adam Clayton Powell of New York, Representative Powell noted the long overdue drive had produced texts that were generally more accurate, realistic, and engrossing than those of

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<sup>63</sup>Report of the National Advisory Commission on Civil Disorders (New York: Bantam Books, Inc., [1968]), p. 434.

<sup>64</sup>Thomas L. Millard, "The Negro in America, A Legacy Unrecognized," Clearing House 40 (September 1965): 38.

<sup>65</sup>H. B. Scribner, "Teaching Truth or Bias?," School and Society 97 (February 1969): 76.

<sup>66</sup>Lerone Bennett, Jr., "The Negro in Textbooks: Reading, 'Riting, and 'Racism," Ebony, March 1967, p. 132.

<sup>67</sup>Sol M. Elkin, "Minorities in Textbooks," Teachers College Record 66 (March 1965): 502.

former times.<sup>68</sup> Price and Spencer have noted that in more recent years, particularly since the advent of federal money on the education scene, books have been showing the Negro in new situations breaking through the "happy Southern darky" stereotype.<sup>69</sup>

The treatment of other ethnic minorities in textbooks somewhat parallels that of the Negro. According to Gurule, no material should be demeaning from the Mexican-American child's point of view. The Mexican-Americans' identity as worthwhile human beings must be affirmed.<sup>70</sup> The textbooks and materials offered in the schools are not relevant to the Mexican-American community.<sup>71</sup> In California, Dr. Myron Schussman, Assistant Superintendent of Instruction of Education of Santa Clara County, said:

The real conscious historians have always recognized the role of Chinese and Spanish contributions in California's history.<sup>72</sup>

In a survey conducted by the Jewish Communal Affairs Department on texts used in junior and senior high schools throughout the country, errors, misconceptions, and prejudice about Jews were evident.<sup>73</sup> Bertrand H. Gold, Executive Vice-President of the American Jewish Committee, stated that textbooks examined in the survey portrayed Jews as almost

<sup>68</sup>"House Committee Studies Treatment of Minorities in Text and Library Books," Publishers' Weekly, September 19, 1966, p. 34.

<sup>69</sup>Robert D. Price and Thelma L. Spencer, "Elementary Social Studies Textbooks and Their Relevance to the Negro Child," Social Studies 61 (April 1970): 169.

<sup>70</sup>Kay Gurule, "Truthful Textbooks and Mexican-Americans," Integrated Education 11 (March-April 1973): 38.

<sup>71</sup>*Ibid.*, p. 39.

<sup>72</sup>Lucian Davis, "Current Controversy: Minorities in American History Textbooks," Journal of Secondary Education 41 (November 1966): 293.

<sup>73</sup>"AJC Survey Finds Errors and Prejudice in Textbooks," Library Journal 94 (September 15, 1969): 3122.

invisible citizens; and when they do appear, the student, for the most part, is given a bland portrayal of the life and culture of the Jewish people. Students develop little, if any, appreciation of Jewish contributions to Western civilization or to American society.<sup>74</sup>

The treatment of the American Indian in textbooks has long been a major concern of the Indian people. It is the belief of Indian people that textbooks which patronize and degrade Indians are injurious to their children's sense of racial dignity.<sup>75</sup> Concerning prejudice in textbooks, Rupert Costo, editor of Textbooks and the American Indian, made the following statement:

Everyone has the right to his opinion. A person has also the right to be wrong. But a textbook has no right to be wrong, or to lie, evade the truth, falsify history or insult or malign a whole race of people.<sup>76</sup>

Kirkness has pointed out that Indians receive the worst treatment of any class of minorities in textbooks either by omission or commission.<sup>77</sup>

The role of women in textbooks has caused much concern by women's groups along with the National Education Association and the American Federation of Teachers.<sup>78</sup> Since 1967, feminists have charged that textbooks used for elementary reading instruction have presented few role models for girls and a picture of women that is either inaccurate,

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<sup>74</sup>Ibid., p. 3124.

<sup>75</sup>Verna J. Kirkness, "Prejudice About Indians in Textbooks," Journal of Reading 20 (April 1977): 596.

<sup>76</sup>Rupert Costo, ed., Textbooks and the American Indian (San Francisco: Indian Historian Press, Inc., 1970), p. 54.

<sup>77</sup>Kirkness, op. cit., p. 600.

<sup>78</sup>Dennis J. Chase, "Sexism in Textbooks?," Nation's Schools 90 (December 1972): 31.

passive, or negative.<sup>79</sup> Darrow made the following comment in I'm Glad I'm a Boy! I'm Glad I'm a Girl!: "Boys invent things, girls use what boys invent."<sup>80</sup>

In a study conducted by Weitzman and Rizzo, 8,000 pictures were analyzed in the most widely-used textbook series in the United States in the areas of science, arithmetic, reading, spelling, and social studies. While women comprise 51 percent of the total United States' population, only 31 percent of the pictures analyzed were illustrations of females.<sup>81</sup> Another important aspect of the study illustrated the higher the grade level, the more women became less numerous and by implication less significant as role models.<sup>82</sup>

The Central New Jersey Chapter of the National Organization of Women conducted a survey of basal readers and distributed the findings in amended form as Dick and Jane as Victims. The group examined 144 elementary readers from 15 differing series and found that 881 of the stories centered around boys while only 344 centered around girls. In similar proportion, there were 282 stories centered around adult males, as compared to only 127 stories about adult females.<sup>83</sup>

Much of the controversy concerning females in textbooks is in the use of language and terminology. Subsuming terms are masculine terms which commonly are accepted to

<sup>79</sup>Anne Stevens Fishman, "A Criticism of Sexism in Elementary Readers," The Reading Teacher 29 (February 1976): 445.

<sup>80</sup>Whitney Darrow, Jr., I'm Glad I'm a Boy! I'm Glad I'm a Girl! (New York: Windmill Books/Simon and Schuster, Inc., 1970), p. 32.

<sup>81</sup>Lenore J. Weitzman and Diane Rizzo, "Sex Bias in Textbooks," Today's Education 64 (January-February 1975): 49.

<sup>82</sup>Ibid.

<sup>83</sup>Elizabeth Hagan, Sex Role Stereotyping in Elementary School Readers (Princeton, New Jersey: Central New Jersey Chapter of NOW, [1970]), in Fishman, op. cit., p. 444.

include or refer to females as well as males. However, these terms operate to exclude females.<sup>84</sup> Language is not only a means of communication; it is also an expression of shared assumptions. The word "man" should be replaced by the words "one" or "person" to avoid false impression in the language of textbooks. In referring to "man" or "men" to represent human beings, ambiguity results.<sup>85</sup>

While sexism in textbooks may be a topic of alarm with feminist groups and women in general, most school administrators do not think that sex bias even exists. In an opinion poll taken by Nation's Schools in 1972, 84 percent of those who responded did not think that sex bias existed in curriculum materials.<sup>86</sup> Chase has commented that administrators think sexism in textbooks is absurd and have pushed the issue aside. However, this reaction is unlikely to quiet or deal constructively with a growing complaint of sex bias in instructional materials.<sup>87</sup> Of the administrators that were surveyed, 70 percent would stop using texts that established sex bias, and in the next selection of textbooks, a greater importance would be placed upon the elimination of sex bias.<sup>88</sup>

In a 1972 study, Stewig and Higgs showed that textbooks featured highly unrealistic presentation of women's roles.<sup>89</sup> In a subsequent study conducted by Stewig and Knipfel,

<sup>84</sup>Elizabeth Burr, Susan Dunn, and Norma Farquhar, "Women and the Language of Inequality," Social Education 36 (December 1972): 841.

<sup>85</sup>*Ibid.*, pp. 841-42.

<sup>86</sup>"Schoolbook Sex Bias: Seek and Ye Shall Find?," Nation's Schools 90 (December 1972): 18.

<sup>87</sup>Chase, *op. cit.*, p. 31.

<sup>88</sup>"Schoolbook Sex Bias: Seek and Ye Shall Find?," *op. cit.*, p. 18.

<sup>89</sup>John Warren Stewig and Margaret Higgs, "Girls Grew Up To Be Mommies: Sexism in Picture Books," School Library Journal 19 (January 1973): 46.



a significant improvement was noted; however, much remains to be done to achieve a more accurate portrayal of women's and men's roles.<sup>90</sup> Girls and boys should learn about the story of women in this country, about suffrage and the current women's liberation movement, and about female heroines of our country and the world.<sup>91</sup> The concept of masculine virtues and feminine characteristics must be reevaluated because there is no such thing as masculine and feminine virtues. They are all human virtues and are desirable for both sexes.<sup>92</sup>

Sorenson states that there is an ongoing battle for better textbooks which will be won when educators insist that only those new textbooks that are approved for purchase and use in the schools meet both high standards in curriculum content and high affirmative standards in providing fair, accurate, and balanced treatment of minority groups.<sup>93</sup>

There are no easy solutions to the problem of providing adequate treatment of minority groups in textbooks. However, a general awareness of the deficiencies is now apparent.<sup>94</sup>

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<sup>90</sup>John Warren Stewig and Mary Lynn Knipfel, "Sexism in Picture Books: What Progress?," The Elementary School Journal 76 (December 1975): 154-55.

<sup>91</sup>Weitzman and Rizzo, op. cit., p. 52.

<sup>92</sup>Celeste M. Brody, "Do Instructional Materials Reinforce Sex Stereotyping?," Educational Leadership 31 (November 1973): 122.

<sup>93</sup>Virginia Sorenson, "Introduction," in Max Rosenberg, "Criteria for Evaluating the Treatment of Minority Groups in Textbooks and Other Curriculum Materials," position paper for the Michigan Association for Supervision and Curriculum Development, n.d., p. 1.

<sup>94</sup>Slotkin, op. cit., p. 23.

## THE TEXTBOOK SELECTION PROCESS

Controversy surrounds textbooks that are used in the public schools. Sternig has stated that textbooks have become a source of a great deal of controversy.<sup>95</sup> Weber concludes that controversy has surrounded public school texts periodically throughout our history.<sup>96</sup> Teachers, administrators, parents, and students agree on the importance of textbooks; and because of this, emotions run high in textbook selection and adoption procedures.<sup>97</sup> When conflicting values and attitudes are involved, citizens who are not easily aroused voice opinions about textbooks that children are using at school.<sup>98</sup>

Weber has stated three principal reasons for the current increase in controversy over textbooks. First, there is an increased public concern about the results of schooling. Many citizens are concerned that students lack the most fundamental skills in reading, writing, and arithmetic; and some of this concern rightly relates to the textbooks and materials used. Secondly, increased controversy has resulted from the greater degree to which textbooks and other materials have recently entered the areas of religion, morals, politics, and sex. The third area of controversy is the result of the changed attitudes of many school professionals. Some educators feel that it is their duty to change the attitudes of children and young people to what they consider as a "better" way of thinking.<sup>99</sup>

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<sup>95</sup>John Sternig, "How to Select New Textbooks," Nation's Schools 77 (March 1966): 114.

<sup>96</sup>George Weber, "Procedures in Adopting Textbooks," Publishers' Weekly, October 13, 1975, p. 34.

<sup>97</sup>John C. Reynolds, Jr., "American Textbooks: The First 200 Years," Educational Leadership 33 (January 1976): 276.

<sup>98</sup>*Ibid.*

<sup>99</sup>Weber, *op. cit.*, p. 34.

In a study of institutional practices sponsored by the National Educators Association Project on Instruction, principals rated the textbook as the resource most useful in a teaching program when compared with locally-prepared materials, state courses of instruction, and materials prepared by professional organizations, educational foundations, and national studies.<sup>100</sup> Wiles, in discussing the pragmatic approach to curriculum change, noted that 85 percent of classroom teachers follow the textbook as a basic guide to instruction and honestly believe that the textbook adoption process is the major way curriculum content is changed.<sup>101</sup>

Prior to 1950, educational practices were centered around group-paced instruction with little or no individualization, a single textbook which for all intents and purposes was the curriculum, survey courses only with no in-depth comparative study of selected topics, and only very limited use of supplementary materials from other books, periodicals, or multimedia sources.<sup>102</sup> Cubberly has noted that probably the most important of all forces directly responsible for American education has been the advent of the high standard American textbook which has served as a guide for both teachers and pupils.<sup>103</sup>

Methods used to select textbooks are varied. With the increased availability of textbook titles to schools, there is more of a need for definite selection criteria.<sup>104</sup> According

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<sup>100</sup>National Education Association, The Principals Look at the Schools (Washington, D. C.: National Education Association, 1962), pp. 23-24.

<sup>101</sup>Robert R. Leeper, ed., Strategies for Curriculum Change (Washington, D. C.: Association for Supervision and Curriculum Development, 1965), p. 5.

<sup>102</sup>Paul I. McCloud, "A Survey of State Textbook Practices," Educational Leadership 31 (February 1974): 438.

<sup>103</sup>Ellwood P. Cubberly, "A Distinctive American Achievement," Educational Progress 5 (January 1926): 4-5.

<sup>104</sup>Richard I. Lester, "Try Out This Checklist for Evaluating New Textbooks," Nation's Schools 85 (January 1970): 97.

to Schneider, the ideal approach to textbook selection is the trial run to test student responses and interests in the materials and to point out problem areas in content and methodology. The least desirable approach is having visits from high-powered sales people and a flood of advertising generated through problem-solving investigation.<sup>105</sup> According to Komoski, less than ten percent of the current 60 "best selling" school textbooks were tested before publication.<sup>106</sup> Krause advances the idea that the first consideration in the evaluation process of a new textbook should be its numerical readability level.<sup>107</sup> Fisher, Coyle, and Steinmetz have stated that a knowledge of characteristics that can be consciously manipulated to produce a variety of effects on the learning process will allow educators to select printed materials that are more likely to meet student needs.<sup>108</sup>

Lester, in Nation's Schools, has provided a general checklist in selecting texts in all subject matter areas.<sup>109</sup> Within the framework of the guidelines is enough flexibility to allow for additional criteria for local conditions and student needs. The checklist for selecting texts includes:

1. Subject matter content — The textbook should be divided in proper proportion according to significance of subject matter. Materials should be presented in an interesting and lively manner that is clear and concise.

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<sup>105</sup>E. Ruth Schneider, "How to Choose a Textbook," Science and Children 15 (October 1977): 30, 33.

<sup>106</sup>"Untested Textbooks," Time, June 7, 1971, p. 33.

<sup>107</sup>Kenneth C. Krause, "Do's and Don'ts in Evaluating Textbooks," Journal of Reading 20 (December 1976): 212.

<sup>108</sup>Judith E. Fisher, Anne F. Coyle, and Robert Steinmetz, "How to Choose a Good Book," Audiovisual Instruction 22 (September 1977): 14.

<sup>109</sup>Lester, op. cit., pp. 97, 122.

2. Organization – A unifying theme should permeate the entire text. The text should be adaptable for varying types of teaching.
3. Authorship – The author should have professional experience at the particular academic level and in subject content area. The author's general philosophy of education should be compatible with that expressed by the department concerned.
4. Consideration of minority groups – The material should meet the basic objectives of our democratic society, particularly as it relates to human rights. The textbook should be non-sectarian with a balanced treatment of minority groups in context. The subject matter should adequately emphasize the pluralistic nature of our multiracial, multiethnic, and multireligious society.
5. Copyright date – The latest teaching procedures and current technology in education should be included in content.
6. Physical makeup – The texts should be durable, sufficiently illustrated, and suitable for the grade level being considered.
7. Aids to locating information in the text – The materials should be arranged in such a manner as to clarify the scope and aims of the subject matter.
8. Self-instructional aids – The texts should include sufficient supplementary materials to fulfill the overall course objectives.
9. Adaptability – The texts should fulfill the purpose of the course.
10. Cost – The texts should be the best available in terms of educational and financial value.<sup>110</sup>

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<sup>110</sup>Ibid.

Sternig, also in Nation's Schools, states that the general criteria of the selection committee should include the following:<sup>111</sup>

1. There should exist a stated and an established purpose of the instructional program for which the texts are being adopted.
2. A large number of selections should be available.
3. The selection committee should represent the users of the materials.
4. The aims of those who develop the materials should be in harmony with those using the materials.
5. The materials should be flexible and adaptable to individual situations.
6. A wide variety of resources for all levels of learning – firsthand, vicarious, and abstract – should be available.
7. An interpretation of the methods should be available to the community.
8. The selection process should have some built-in system for evaluating the effectiveness of existing textbooks and for giving new ones a fair chance to show their worth.<sup>112</sup>

Brodbelt has stated that whenever possible the ultimate aim in selecting a textbook is to match the development level of each pupil in terms of vocabulary, conceptual development, interests, and cognitive knowledge. Several texts should be utilized for varying ranges of student abilities.<sup>113</sup> Brodbelt's mathematical method of textbook selection includes:

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<sup>111</sup>Sternig, op. cit., p. 152.

<sup>112</sup>Ibid.

<sup>113</sup>Samuel Brodbelt, "Using Mathematical Criteria for Selecting Social Studies Textbooks," Clearing House 46 (April 1972): 487.

1. General background information concerning the author, date of publication, and value of the book;
2. Content that has overall organization and logical continuity;
3. Development of critical thinking on the part of the user;
4. High level of readability; and
5. Utilization of necessary supplementary aids.<sup>114</sup>

Another major concern is who should select textbooks. With the irresistible movement toward larger school units and the movement toward cooperative teaching, the influence of the individual teacher and teachers in general has diminished. The influence of special interest groups has increased.<sup>115</sup> Satlow has stated that the principles of democratic control would require that teachers who use the textbooks in the classroom should share in the selection of these books.<sup>116</sup>

Superintendent Harold Eibling of Columbus, Ohio has stated that teachers should have the prime voice in the direct selection of textbooks. However, if textbook selection is automatically left to a volunteer committee of teachers, there is a good chance that the best textbooks available will not be selected.<sup>117</sup> Superintendent William H. James of the Branford, Connecticut schools advocates the use of teachers, principals, and/or supervisors.

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<sup>114</sup>Ibid., pp. 489-90.

<sup>115</sup>John F. Ohles, "Should NCSS Evaluate Textbooks?," Social Education 33 (March 1969): 322.

<sup>116</sup>I. David Satlow, "Teachers Share Textbook Selection," Journal of Business Education 41 (February 1966): 188.

<sup>117</sup>"Is Your District Using the Right Textbooks?," School Management 8 (October 1964): 80.

the superintendent, and a person or persons recommended by the board of education on the textbook selection committees.<sup>118</sup>

Klein has stated that school personnel fail to realize that many educational researchers would welcome the opportunity to assist the schools in selecting textbooks.<sup>119</sup> By gathering data on the texts to be adopted, school personnel would be in a better position to adopt texts and materials and to explain the rationale for their decisions to parents, school boards, and staff.<sup>120</sup>

Weber has stated that the final decision regarding materials selection should be in the hands of officials who represent the public; however, the decision must not be a rubber-stamp operation. School professionals should make use of their technical competence to recommend texts and materials which they believe will do the best job. The public should be consulted to prevent conflicts with materials that are offensive. Professionals should survey a vast array of textbooks and other materials available and make preliminary choices on technical grounds bearing in mind community values. The choices should be reviewed by a committee of lay community representatives with the ultimate decision being made by local or state school boards.<sup>121</sup>

Publishers and students have roles to play in the textbook selection process. Publishers are responsible to schools, teachers, students, and society at large and relate directly

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<sup>118</sup>William H. James, "How to Get Rid of the Weak Ones," in *Ibid.*, p. 83.

<sup>119</sup>Alice E. Klein, "Adopting a Textbook, or: Research Can Help!," School Science and Mathematics 73 (December 1973): 743.

<sup>120</sup>*Ibid.*, p. 746.

<sup>121</sup>Weber, *op. cit.*, p. 35.



to the nation's well-being and to the future of the American way of life.<sup>122</sup> Textbook representatives are trained in how well their products will meet each individual school's particular needs.<sup>123</sup> Including student input and involvement in making important decisions within the organization increases the overall commitment to the organization.<sup>124</sup>

The impact of textbooks on American schools for the past two centuries has been powerful and continues to be so. For the future, cooperative efforts by educators, parents, students, and textbook publishers are essential in maintaining the effectiveness of textbooks used in the schools.<sup>125</sup>

#### SUMMARY

Basically, the power to control schools is a state function. The textbook selection process is within the confines of the power given to each state. Therefore, selection is by governing statutes either on a state-wide basis or as a responsibility given to local agencies by legislative enactments. This is within the traditional view that education is a local issue and is the responsibility of the local populace.

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<sup>122</sup>John T. Riordan, "Educational Publishing: In Diversity Is Our Strength," Publishers' Weekly, October 13, 1975, p. 35.

<sup>123</sup>"Memo From a Textbook Salesman: Bad Textbook Purchases Are Your Fault," School Management 11 (January 1967): 106.

<sup>124</sup>Daniel J. Dieterich, "Student Unrest and Participation in Curriculum Planning," English Journal 61 (March 1972): 445.

<sup>125</sup>Reynolds, op. cit., p. 276.

Fulbright and Bolmeier have summarized areas of concern in relation to the textbook selection process and the law as follows:

1. The agency responsible for the selection of textbooks receives its power from enactments, either expressed or implied, of the legislature. The mandatory procedures set forth in the statute must be followed by the group.
2. Local school officials may adopt textbooks in the absence of specific legislation or an adoption by the state. Although textbook selections may be made locally, the state can exercise its power if it elects to do so.
3. The requirement of a statute for a uniform system of common schools does not necessarily mean that provision must also be made for a uniform series of textbooks.
4. In the absence of a statutory definition, a uniform series of textbooks does not necessarily have to be a set of books on a specific subject by the same author for all grades, but the requirement of a uniform series may be met if uniformity is maintained within each grade.
5. A state may exempt specified districts from uniform requirements of textbooks, under the statutes, in part or completely.
6. School authorities may be compelled to use state adopted textbooks; however, even where mandatory use of state selected textbooks is made, boards of education have the authority to specify the use of supplementary books and to select textbooks for courses which are not required by the state. On the other hand, schools may not use books in the place of adopted textbooks merely on the contention that the books are for reference or supplementary work.
7. A selecting agency for textbooks may reconsider its action at any time if the statute so permits. If times for making changes are specified, the group must comply with the requirement. Reconsideration may also be made before formal adoption by boards or the rights of others have been jeopardized.
8. The legislature has the power to provide free textbooks for public schools, and boards of education have no authority to make provisions for free textbooks unless a statute of the state makes such a specification.
9. Within statutory limitations, the selection of instructional materials other than textbooks generally has been left to local school boards. General instructional materials considered to be necessary for the efficient operation of the school program have been approved.
10. Parents or other interested individuals must show that their rights have been jeopardized before a court will interfere in matters pertaining to the selection of materials of instruction for the public schools.<sup>126</sup>

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<sup>126</sup>Fulbright and Bolmeier, *op. cit.*, pp. 158-59.

Clearly, the textbook selection process is a right of each state which allows for local impetus. Differences are many throughout the states; however, from a legalistic standpoint, it is a state function.

Censorship of texts is a controversial and debated issue. As stated in the March 26, 1973 issue of Newsweek, books are banned for almost as many reasons as they are written.<sup>127</sup> Basically, improper use of language and insertion of materials that are considered objectionable and corruptive to subject content lead to censorship and its ensuing struggles which may or may not eventually be litigated.<sup>128</sup>

Censorship strikes out at the very heart of the textbook selection process. Controversies that exist in one part of the country may change the selection process in another. American education has always reflected national social, economic, and political trends. School and society are interrelated, one serving, affecting, and being affected by the other.<sup>129</sup>

The treatment of minorities in textbooks centers around areas of controversy and is related to social trends of the period. Discrimination of certain groups in textbooks can be perceived as a violation of individual rights. As stated by Rosenberg, all text materials, whether intended or not, affect attitudes while imparting knowledge and skills. The content and illustrations of text materials teach the learner a great deal about social groups and about intergroup life.<sup>130</sup> Ethnic minorities and women have played a definite role in

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<sup>127</sup>"The Book Banners," Newsweek, March 26, 1973, p. 64.

<sup>128</sup>John M. Berry, ed., "Censorship Issues Surface in West Virginia, Ohio, Vermont, and New York School Systems," Library Journal 99 (October 15, 1974): 2688.

<sup>129</sup>Parker, op. cit., p. 31.

<sup>130</sup>Max Rosenberg, "Textbooks: Do They Meet Fair Minority Group Standards?," Educational Leadership 30 (November 1972): 142.

America's history. To exclude these groups in content areas of textbooks can lead to cries of discrimination and eventually court litigations. The textbook selection process has, from a legalistic standpoint, certain duties and obligations in regard to the treatment of such groups.

As stated by Mark Van Doren, "It is hard to imagine this country without textbooks. Indeed, it is impossible; for then we should not have this country as it is . . . ."<sup>131</sup> Selecting which texts to use in the public schools is a multi-faceted task. The selection procedure is a function of educators, parents, pupils, and publishers defined by legislative bodies with ultimate control by authorized agencies. Well-defined selection policy makes for increased clarity of purpose and interpretation to the general public. From a legalistic standpoint, decisions rendered should be from an educational perspective and related to instructional objectives.

Adopted procedures, as defined by governing statutes, relate to how well educational goals are attained. As pointed out by McCloud, educators and legislators have shown commendable leadership in seeking to correct the abuses and inefficiencies of prevailing textbook selection practices.<sup>132</sup>

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<sup>131</sup>Mark Van Doren, "School Books," Publishers' Weekly, May 29, 1967, p. 35.

<sup>132</sup>McCloud, op. cit., p. 438.

Chapter III  
LEGISLATIVE PROVISIONS FOR TEXTBOOK SELECTION  
OVERVIEW

State policy is expressed through the medium of constitutional provisions and statutory enactments. The United States Constitution and state constitutions are fundamental law.<sup>1</sup> The principle that the state legislature, subject to constitutional restrictions, has the authority to pass any act of a legislative nature which may, in its opinion, seem wise is well established.<sup>2</sup> Therefore, the educational policy of each state is the function of its lawmaking body.

The procedure to select textbooks in the respective states falls within the realm of the educational policy of the state legislature.<sup>3</sup> The following section describes the methods by which the 50 states and the District of Columbia select textbooks to be used in the public schools. The governing statutes either directly define how textbooks are to be selected or delegate the responsibility to other governmental agencies or departments. The establishment of specific provisions for textbook selection comes within the power granted to the legislature by state constitutions.<sup>4</sup> However, in carrying out prescribed

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<sup>1</sup>Newton Edwards, The Courts and the Public Schools: The Legal Basis of School Organization and Administration (Chicago: University of Chicago Press, 1955), p. 27.

<sup>2</sup>Ibid.

<sup>3</sup>Edward C. Bolmeier, Legal Limits of Authority Over the Pupil (Charlottesville, Virginia: Michie Company, 1970), p. 46.

<sup>4</sup>Edwards, op. cit., p. 30.

policies, the legislatures may delegate administrative powers to other agencies or officials.<sup>5</sup> Whichever method is employed, the textbook selection process is a function of the state legislature.

Presentation of the legislative enactments or administrative procedures is in alphabetical form. Only those sections that pertain to how textbooks are to be selected and those responsible for selection are presented. Information has been obtained from the United States Constitution, various state constitutions that relate to the textbook selection process, governing statutes of all the states, and administrative procedures in relation to textbook selection of several states. Several of the states do not directly concern themselves as to how textbooks are to be selected by local school districts. Gathering information from all such agencies would be virtually impossible; however, a broad general guideline can be concluded from the statutes of various states that do address the responsibility of local school districts in regard to adopting instructional materials.

The textbook selection process is everchanging, and the material that is presented in this section is subject to revision in the future. The future reader will need to consult each individual state's provisions for textbook selection to obtain a more accurate description of how textbooks are selected.

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<sup>5</sup>Ibid.

## THE CONSTITUTION OF THE UNITED STATES

Although education is not specifically mentioned in the United States Constitution, interpretation of the Constitution gives a legal basis for providing for training of the youth of America. The Preamble of the Constitution states:

We the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.<sup>6</sup>

Interpretation of “provide for the common defence” and “promote the general Welfare” falls within the auspices of insuring that educational opportunities for America’s youth exist.

Establishment of a public school system within the United States is not referred to directly in the Constitution. However, interpretation of the Tenth Amendment gives a legal basis for the establishment of schools.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.<sup>7</sup>

The burden and responsibility of education, therefore, is delegated to the States or to the people. Education thus becomes a function of the individual states and localities. Through delegating these responsibilities, the United States, therefore, relinquishes its authority and responsibility except where violations of other parts of the Constitution are evident.

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<sup>6</sup>U. S., Constitution, Preamble.

<sup>7</sup>U. S., Constitution, amend. X.

## TEXTBOOK SELECTION PROVISIONS OF THE INDIVIDUAL STATES

Provisions for a public school system are assumed under the powers delegated to each state by Amendment X of the United States Constitution. Each of the 50 states in their constitutions specifically mentions education. The following is a listing of all 50 states' and the District of Columbia's procedures for textbook selection as defined by either state constitutions, governing statutes, and/or administrative rules and regulations.

### Alabama

Alabama's general procedure for selection of textbooks makes use of the State Board of Education, a State Courses of Study Committee, and a State Textbook Committee. Specific statutes address various functions and limitations in the process. The textbook selection process is described as follows.

The governing statutes of the State of Alabama provide for a State Courses of Study Committee.

#### § 16-35-1. Composition; appointment, qualifications and terms of members.

The state board of education shall constitute a courses of study committee for the purposes and functions as hereinafter provided. The state courses of study committee shall consist of two sections: an elementary section and a secondary section. The elementary section shall include grades 1 through 6. The secondary section shall include grades 7 through 12. The elementary section shall consist of the following: two teachers from each grade level, three elementary principals, two elementary supervisors and one college professor of elementary education. The secondary section shall consist of three teachers from each secondary subject matter field, three secondary principals, two secondary supervisors and one college professor of secondary education.

Standards for membership on the courses of study committee shall be prescribed by the state board of education, and said standards shall be sent to every local board of education and every county and city superintendent.

Local boards of education, through their superintendents, shall nominate persons to serve on these committees. Local boards shall furnish credentials



of each person recommended, including a summary of each person's qualifications for membership on the committee. All nominations along with said credentials shall be forwarded to the state superintendent of education. The state board of education, upon the recommendations of the state superintendent of education, shall appoint all members of the courses of study committee from the nominees made by the local boards of education.

Approximately one half of the members shall be from school systems with 9,000 or more students and approximately one half of the members shall be from school systems with less than 9,000 students.

The term of office of the members of said committee shall be for a period of six years, and the members shall hold office until their successors shall be appointed. (Acts 1965, 1st Ex. Sess., No. 221, p. 288, § 1.)<sup>8</sup>

The State Board of Education's function in regard to the courses of study is as follows.

#### § 16-3-15. Courses of study.

The state board of education, on the recommendation of the state superintendent of education, shall prescribe the minimum contents of courses of study for all public elementary and high schools in the state, and shall fix the maximum number of books which are compulsory in each grade of the elementary schools. In every elementary school in the state there shall be taught at least reading, spelling, handwriting, arithmetic, oral and written English, geography, history of the United States and Alabama, elementary science, hygiene and sanitation, physical training and such other studies as may be prescribed by the state board of education. (School Code 1927, § 38; Code 1940, T. 52, § 17.)<sup>9</sup>

The governing statutes of the State of Alabama call for a State Textbook Committee.

#### § 16-36-1. State textbook committee – Creation; duties generally.

There is hereby created a committee to be known as the state textbook committee.

It shall be the duty of the said committee to consider the material of textbooks offered for use in the public elementary and high schools of the state and to make recommendations to the state board of education as hereinafter provided. In making such recommendations, said committee shall consider any recommendations made by the committee on courses of study or by the state superintendent of education. The state textbook committee in its

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<sup>8</sup>Alabama, Code (1975), Title 16, Section 16-35-1.

<sup>9</sup>Ibid., Section 16-3-15.

recommendations shall consider the advisability of staggering adoptions in order that expenditures for textbooks may be equalized from year to year insofar as practicable. (Acts 1945, No. 412, p. 647, § 1.)<sup>10</sup>

**§ 16-36-8. Recommendations of textbook committee.**

(a) The state textbook committee shall recommend at least six textbooks on each subject for adoption in each grade, unless fewer than six acceptable textbooks are available. Such recommendation shall be made to the state board of education in writing, and both recommendations and any dissents therefrom shall be filed with the state board of education and shall be made available for public inspection upon the filing thereof. The state textbook committee in its recommendations to the state board of education shall undertake to implement staggered adoptions in order that:

(1) All textbooks on a given subject for all grades shall be considered for adoption in the same year; and

(2) Expenditures for textbooks may be equalized from year to year insofar as practicable.

(b) The state textbook committee shall also have the authority to recommend other instructional materials which in its opinion will improve the instructional program or when requested to do so by the state board of education. (Acts, 1945, No. 412, p. 647, § 6; Acts 1965, 1st Ex. Sess., No. 221, p. 288, § 6.)<sup>11</sup>

Various other aspects of the textbook selection process are provided for in the governing statutes.

**§ 16-36-6. Same — Adoption to be for period of six years; limitation on textbook replacement; report of local superintendent.**

The adoption of a textbook by a majority vote of the local committee shall be for a period of six years and may not be changed within such period of time unless such change has been authorized by the state board of education or as otherwise authorized by law.

Not more than one sixth of the total value of the required textbooks, in all grades, as determined by contract prices in effect in each successive year multiplied by the number of books required in each grade and subject, of state-owned textbooks may be replaced by new adoptions in any one year by any city or county school system.

The superintendent of education of each local school system shall not later than 30 days after the date of such adoptions file a report with the state superintendent of education listing the titles, the names of the authors, the publishers and the date of adoption of each textbook. (Acts 1965, 1st Ex. Sess., No. 221, p. 288, § 11.)

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<sup>10</sup>Ibid., Section 16-36-1.

<sup>11</sup>Ibid., Section 16-36-8.

**§ 16-36-7. When textbooks considered or reconsidered for adoption; existing adoptions; when new adoptions to be used.**

The state board of education shall divide the subjects of study in the public schools so that all textbooks on a given subject for grades one through 12 shall be considered for adoption in one year. The state board of education shall prescribe a system of rotation so that the textbooks for each subject shall come up for reconsideration by the state textbook committee every six years. All textbooks in adoption on April 20, 1965, shall be used in the public schools during the scholastic year 1965-1966, unless otherwise determined by the state board of education, and, thereafter as approved by the state board of education. New adoptions made during any year shall not be used in the public schools until the next ensuing scholastic year. In the initial implementation of the provisions of this section, the state board of education shall have the privilege of extending existing adoptions for such period of years as it deems appropriate notwithstanding any other provisions of this chapter. (Acts 1965, 1st Ex. Sess., No. 221, p. 288, § 5.)<sup>12</sup>

**§ 16-36-9. Adoption of textbooks to be made at public meeting; notice; minimum number of adoptions for each course.**

Prior to adoptions by the state board of education, members of the public shall be allowed a reasonable amount of time to be heard concerning any book recommended for adoption. Adoption of textbooks shall be made only at a public meeting of the state board of education. Published notice of proposed adoptions and the time and place of the meeting of the state board of education to consider adoptions shall be given for at least 30 days, by notice to news media, written notice to each local board of education and by posting a notice on a bulletin board or in some other conspicuous place in the offices or public rooms of the state department of education.

The state board of education shall adopt from among the textbooks recommended by the state textbook committee at least four adoptions for each course in each grade unless fewer than four acceptable textbooks shall have been recommended by the state textbook committee. (Acts 1965, 1st Ex. Sess., No. 221, p. 288, § 7.)

**§ 16-36-10. Adoption to be for period of six years; contract to exclude communist authors; expiration of contracts to be stabilized.**

All adoptions recommended by the state textbook committee and subsequently adopted by the state board of education shall be for a period of six years, and no change shall be permitted within such period unless recommended to the state board of education by the state textbook committee.

In addition to all other laws which forbid the use of textbooks in the public schools of the state by authors who are members of the communist party or members of communist front organizations, all contracts with publishers for furnishing state-owned textbooks shall stipulate that the

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<sup>12</sup>Ibid., Sections 16-36-6 through 16-36-7.

author or authors of such book or books is not a member of the communist party or known advocate of communism or Marxist socialism and is not a member of the communist party or of a communist front organization.

The state board of education shall establish procedures to stabilize the expiration of publishers' contracts for state-adopted books in a manner to effect an orderly review and new adoption of textbooks within the financial limitations imposed by this chapter. (Acts 1965, 1st Ex. Sess., No. 221, p. 288, § 8.)<sup>13</sup>

§ 16-36-19. Special textbooks.

(a) It shall be the duty of the state board of education to negotiate with publishers of textbooks or authors of textbooks for the preparation and publication, or either, of special textbooks for use in the public schools of the state. In the event anyone undertakes the preparation of a special textbook for the purpose of making the same more suitable and desirable for use in the public schools of the state, the state superintendent of education shall cause to be submitted such specially prepared textbook or such specially arranged textbook to the state textbook committee for its findings and rating as to its desirability and suitability for the purposes offered; and, if approved by the state textbook committee, same shall be certified to the state board of education for its consideration.

(b) In the event the state board of education is unable to obtain what it considers a desirable contract for a textbook on any particular subject with publishers whose books have been given approval by the state textbook committee, the state board of education may require the state superintendent to negotiate with publishers or persons to secure the preparation of a textbook on such subject or to secure the submission of other texts on such subject for consideration by the state textbook committee. The state board of education may take such other action as it may deem proper to secure an advantageous contract in behalf of the patrons of the public schools of the state; provided, that no book shall be adopted by said board of education unless the same has been found suitable and desirable for the purposes for which it was intended to be used by the state textbook committee. (Acts 1945, No. 412, p. 647, § 8.)<sup>14</sup>

§ 16-36-22. Substitutions for state-adopted books in certain cities and counties.

In cities having a city board of education, the board of education, upon the recommendation of the city superintendent of schools and the approval of the state board of education, may substitute in its list of high school books texts other than those prescribed by the state board of education. In all counties having populations of not less than 150,000 nor more than

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<sup>13</sup>Ibid., Sections 16-36-9 through 16-36-10.

<sup>14</sup>Ibid., Section 16-36-19.

180,000, according to the most recent federal decennial census, if there is a consolidated city-county school system therein, the consolidated city-county board of education may, upon recommendation of the local superintendent of education or superintendent of schools, as the case may be, substitute other textbooks for use in junior and senior high schools for the approved or state-adopted textbooks. (Acts 1945, No. 412, p. 647, § 12; Acts 1961, No. 724, p. 1040; Acts 1961, No. 932, p. 1498; Acts 1971, No. 1672, p. 2820.)<sup>15</sup>

Limitations of individuals concerned with the selection of textbooks are provided for by law.

**§ 16-36-36. Interest in contracts, etc., prohibited; oath of members of state board of education.**

Neither the state superintendent of education nor any member of the state board of education shall have an interest, directly or indirectly, in any contract that might be made pursuant to the provisions of this chapter for the purchase of textbooks by the state, nor shall he have any interest as an author, an associate author, a publisher, a representative or agent of an author or of a publisher of any textbook, nor shall he have any pecuniary interest, directly or indirectly, in the business or profits of any person, firm or corporation engaged in the manufacturing, publishing or selling of textbooks, nor shall he accept any emolument, promise of future award or consideration of value of any kind from any publisher of textbooks or his agent. Each member of the state board of education shall, before qualifying, take the oath of office required by section 16-36-4 in the case of members of local textbook committees. Any violation of this provision shall be unlawful. Upon conviction of any such violation such person shall be subject to a fine not exceeding \$10,000.00 or five years in the state penitentiary or both, and his office as a member of the state board of education shall be forfeited. (Acts 1965, 1st Ex. Sess., No. 221, p. 288, § 29).

**§ 16-36-37. Use of other than contract books in the public schools.**

Any teacher who shall use or permit to be used in his or her school any textbook upon the branches for which textbooks are adopted, where the committee has adopted a book upon the branch other than the one so adopted, except supplementary books, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than \$10.00 nor more than \$50.00. (Code 1907, § 7751; Code 1923, § 5465; Code 1940, T. 52, § 615.)<sup>16</sup>

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<sup>15</sup>Ibid., Section 16-36-22.

<sup>16</sup>Ibid., Sections 16-36-36 through 16-36-37.

### Alaska

In Alaska, the textbook selection process is a concern of local school districts. There are no provisions for a state-wide adoption procedure. The following is a legal representation of Alaska's textbook selection process.

The State of Alaska basically has no textbook selection requirement at the State level.<sup>17</sup> The governing statutes of the State of Alaska call for the selection of textbooks by district boards and by a State Schools Textbook Committee which are appointed by the Director for State Schools.

Sec. 14.07.050. Selection of textbooks. (a) Textbooks for use in the public schools of the state shall be selected by district boards for district schools and by a State Schools Textbook Committee appointed by the director for state schools. Selections of the State Schools Textbook Committee shall be submitted to the Board of Directors for State-Operated Schools for approval or rejection.

(b) However, a district may elect to adopt the selections of the State Schools Textbook Committee. (§ 1 ch 98 SLA 1966; am § 1 ch 96 SLA 1970; am § 2 ch 205 SLA 1970)<sup>18</sup>

In the event a school board decides to select texts, a list of the selections must be sent by the board to the state department of education.

Sec. 14.07.057. Transmittal selections. A school board which selects its own books shall forward a list of the selections to the department. (§ 1 ch 98 SLA 1966)<sup>19</sup>

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<sup>17</sup>Personal correspondence from Jeff C. Jeffers, Special Assistant to the Commissioner, Department of Education, Juneau, Alaska, 8 March 1978.

<sup>18</sup>Alaska, Statutes Annotated (1962), Title 14, Chapter 7, Section 14.07.050.

<sup>19</sup>*Ibid.*, Section 14.07.057.

### Arizona

The selection of textbooks in Arizona is a function of the State Board of Education. Textbooks are reviewed by an evaluation committee with specific guidelines for selection. Provisions for textbook adoption are as follows.

The authority to select textbooks in the State of Arizona comes under the general powers and duties of the State Board of Education.

#### § 15-102. Powers and duties

The state board of education shall:

18. Prescribe textbooks for the common schools, and shall prepare a list of not less than three nor more than five textbooks for each grade and each subject taught in the common schools for the selection by the school district of one book from such list for each student, except that for courses which do not require that each student have a book other than for classroom instruction the district need only purchase one book for each student in the largest group which would be receiving classroom instruction at any one time. The books or instructional matter so selected shall be purchased by the school district direct from the publisher as provided in this title, except that a school district may substitute a textbook for a prescribed textbook upon approval by the state board of education of an application for such substitution. Textbooks selected pursuant to the provisions of this title shall not be changed during the next five years.<sup>20</sup>

#### § 15-1101. Furnishing of free textbooks.

A. Free textbooks shall be furnished in the common schools and all state welfare institutions maintaining educational facilities.

B. The state board of education shall annually prepare lists of approved supplementary books from which the board of trustees of a school district may, with the approval of the state superintendent of public instruction, purchase supplementary books.<sup>21</sup>

Within the framework of the textbook selection process are state textbook evaluation committees which function under the auspices of the State Board of Education.

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<sup>20</sup>Arizona, Revised Statutes Annotated, Title 15, Section 15-102.

<sup>21</sup>Ibid., Section 15-1101.

**(4) Establishment of the State Textbook Evaluation Committees and Their Procedural Guidelines**

**(a) Establishment**

In order to facilitate the selection of basic textbooks and supplementary books which fulfill the content requirements of the state adopted Course of Study for each subject taught, pursuant to ARS 15-102.18 and 15-1101 B, the State Board of Education shall appoint a twenty-seven (27) member advisory committee comprised of two-thirds educators, and one-third laymen (parents and/or citizens) for the subject areas to be considered each year, all of whom shall be voting members. Every effort will be made to coordinate with the Arizona Education Association, Arizona School Administrators and the Arizona Federation of Teachers in the appointment of nine (9) of the educators. Each Board member shall select two educators and one layman with all selections being subject to approval by the State Board after they are assured that a balanced representation of the various grade levels and geographical distributions has been met. The committees appointed shall follow the guidelines and policies adopted by the State Board for the evaluation of textbooks and when the State Board accepts their recommendations, they become the official list of state suggested (free) textbooks and official list of suggested supplementary books. Terms of all members shall be for the time necessary to accomplish the task not to exceed one year. (SBE AMENDED 10/15/73—A.G. APPROVED 1/22/74)

**(b) Procedural Guidelines**

**i. General Purpose**

The State Textbook Evaluation Committee shall act in an advisory capacity to the State Board of Education in regard to:

- A. Studying available instructional materials offered by publishing companies;
- B. Recommending for selection three to five textbooks for each subject area pursuant to ARS 15.102.18;
- C. Recommending supplementary textbooks for each subject area pursuant to ARS 15.1101 B.

**ii. Structure**

**A. Membership**

- 1. There shall be twenty-seven (27) voting members on this committee comprised of nine (9) laymen and eighteen (18) educators who represent various geographical areas and grade levels.
- 2. The educator members shall be chosen from these categories:



Principal – elementary

Content Specialist – university based  
(in content being considered)

Curriculum Specialist – elementary based  
(in content being considered)

Teachers from K-3; 4-6; 7-8; 9-12

3. There shall be concerted effort to have ethnic representation on the committee.

**B. Selection**

1. Each Board member shall select one layman and two educators to serve at the pleasure of the Board member. All members shall be subject to final approval by the State Board, after they are assured that a balanced representation of the various grade levels and the geographical distribution has been met.
2. Members shall not be or have recently been directly or indirectly connected with any textbook publishing house.

**C. Terms; Vacancies**

1. All regular terms are for the time necessary to accomplish the task not to exceed one year.
2. Vacancies shall be filled by the Board members whose member could not serve.

**iii. Procedure**

**A. The State Textbook Evaluation Committee shall:**

1. Select from its voting members its committee chairman, vice-chairman and secretary;
2. Establish procedures for conducting business according to Robert's Rules of Order Revised, with a quorum being a majority of the voting members of the committee;
3. Schedule meetings at the convenience of the membership, by chairman action; or if he is absent, or neglects, or declines to call a meeting, then by any two members of the Committee; or by State Board request as required to conduct necessary business, with notification being given seven days prior to the meeting;
4. Recommend the removal of any member who retards the work of the Committee by continued absence;

5. Obtain any material and/or resources or assistance required from the Department of Education;
  6. Establish time schedules and develop standards for evaluation based on inclusion and presentation of the basic minimum content in the Course of Study; and appropriate readability;
  7. Determine the method of balloting based on rank order mathematical input from each committee member;
  8. Make available the names of all members, their addresses and schools to all publishers, all elementary school districts in Arizona, county school superintendents and the State Board of Education;
  9. Obtain for each member from any publishers, who wish to present programs for consideration, all samples of books and/or materials or descriptive literature and these shall become the property of receiving members unless otherwise stipulated by the publishers;
  10. Select textbooks for adoption K-8 in all subjects and prescribe suitable teaching materials for Arizona and American History and Free Enterprise for high school;
  11. Meet on or before December 15 to arrive at common agreement on the three to five textbooks to recommend to the State Board of Education;
  12. Recommend the final list of three to five textbooks for each subject area to the State Board of Education on or before January 10; and
  13. Recommend the list of supplementary books for each subject area to the State Board of Education on or before January 10.
- B. The State Superintendent of Public Instruction shall:
1. Call the original organizational meeting and provide each member with a copy of these guidelines;
  2. Accept sealed bids from the publishers on or before October 1;
  3. Require a list of all instructional materials, including visual aids presented by each publisher to every member or their representative school;
  4. Provide, after bids have been accepted, each school district, Evaluation Committee Member, State Textbook Committee Member, and publisher, involved with the selection, a summary of the

State Evaluation Committee's recommendations and an alphabetical listing by publishers of the programs suggested by the State Board of Education.<sup>22</sup>

### Arkansas

The State of Arkansas employs a State Board of Education and State Textbook and Instructional Materials Selecting Committees in the textbook selection process. Textbooks are then selected upon the recommendations and enactments of the Committees and the Board. The general provisions for textbook selection are as follows.

The general power of textbook selection resides with the State Board of Education which authorizes the appointment of State Textbook and Instructional Materials Selecting Committees.

80-1703. Adoption and purchase of materials.—All free textbooks and other instructional materials furnished as herein provided shall be selected, adopted, and purchased as hereinafter provided. [Acts 1975. No. 302. § 3, p. 763.]

80-1704. Determination of subjects—Bids—Selecting committees—Lists and prices—Requisition forms.—Not later than March 15 of each year the State Board of Education shall determine all subjects for which textbooks and other instructional materials are to be selected for grades 9-12, inclusive, for the succeeding school year. The State Board of Education shall authorize and direct the Director, Department of Education, hereinafter called the Director, to call for bids thereon and tabulate the same; appoint State Textbook and Instructional Materials Selecting Committees for such textbooks and other instructional materials, require the selection of textbooks and other instructional materials by the State Textbook and Instructional Materials Selecting Committees from the list of textbooks and other instructional materials referred to said committees by the State Board of Education; make and execute contracts with publishers of such textbooks and other instructional materials to be provided; and do all other things necessary to provide the pupils free textbooks and other instructional materials in such subjects.

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<sup>22</sup>Arizona State Board of Education, Administrative Rules and Regulations, Title 7 - Education, Chapter 2, Phoenix, Arizona, n.d., pp. 38-42.

80-1705. Determination of subjects for succeeding school years—Bids—Procedure—Book depositories.—In December of each year the State Board of Education shall determine the subjects for which State adoptions are to be made for grades 1-8, inclusive, for the second succeeding school year. The Board shall authorize the Director to call for bids in these subjects and shall prescribe rules and regulations for all publishers offering bids. The Director shall send notices for bids and regulations for bidding to all publishers of textbooks and other instructional materials FOB his Little Rock or North Little Rock depository and all publishers receiving state contracts will be required to maintain one or more book depositories in Little Rock or North Little Rock at the publisher's expense. Any publisher of textbooks may be placed upon the mailing list upon request. [Acts 1975, No. 302, § 5, p. 763]<sup>23</sup>

Appointment, powers and duties of the Selecting Committees are defined as follows.

80-1707. Selecting committees—Appointment—Duties—Qualifications.—Not later than March 15 of each year, the State Board of Education upon recommendations of the Director shall appoint a Selecting Committee of 9 persons for each adoption to be made, and said Committee shall select books, series of books, or instructional materials for those subjects for which textbooks and other materials are to be selected during the succeeding calendar year. Members of the Selecting Committees shall have had not less than five [5] years' teaching or supervising experience in the public schools of Arkansas; must have had at the time of appointment at least four years of college training from a recognized institution of higher learning; must be teachers or supervisors in the subject for which the textbook or other materials are being selected; must be actively employed in the public schools of Arkansas during the full time of service on the Committee; and shall have had at least three (3) years' teaching experience in the subject field for which the Committee will make selections. The membership of each committee shall be broadly or generally representative of the grades included in the adoption to be made by it. [Acts 1975, No. 302, § 7, p. 763.]

80-1708. Selecting committee recommendations—Compensation.—  
 (a) For grades nine (9) through twelve (12), inclusive, it shall be the duty of each selecting committee to recommend to the State Board of Education not less than six [6] books for each unit of study on each subject for which it is appointed, provided at least six [6] suitable books have been bid.  
 (b) For grades one (1) through eight (8), inclusive, it shall be the duty of each selecting committee to recommend to the State Board of Education textbooks and other instructional materials for not less than six [6] nor more than nine [9] total basic instructional programs, provided at least

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<sup>23</sup>Arkansas, Statutes Annotated (1947), Title 80, Chapter 17, Sections 80-1703 through 80-1705.

six [6] suitable programs have been bid, and textbooks and other instructional materials for not more than nine [9] total supplementary instructional programs.

(c) The Director shall call the Committees into session at the State Capitol in Little Rock within thirty [30] days after their appointment, at which time they shall organize and proceed to perform their duties under this Act [§§ 80-1701–80-1717] and the rules and regulations formulated by the State Board of Education. The final recommendations of the Selecting Committees shall be presented to the State Board of Education not later than December 15 of the same year. Members of the Selecting Committees shall serve without compensation but shall be reimbursed for actual expenses incurred in attending Committee meetings. [Acts 1975, No. 302, § 8, p. 763.]<sup>24</sup>

After review and recommendations by the Textbook Selecting Committees, the State Board of Education selects textbooks for the public schools.

80-1709. Presentment of recommendations—Limitation on contracts—Contract renegotiation—Renewal.—The Director shall present the recommendations of the State Selecting Committees to the State Board of Education at its next regular meeting or call a special meeting of the State Board of Education in event the State Board of Education will not be in regular session within thirty (30) days after the recommendations of the State Selecting Committees have been given the Director.

The State Board of Education shall make and execute contracts with all publishers whose books, series of books or instructional materials have been recommended by the Selecting Committees. The State Board of Education shall determine the contract period, provided that no contract period shall be less than three (3) years nor more than five (5) years. Paperback book [books]—novels, plays, etc. in a softbound cover which are a part of a basal textbook program are excluded from this provision and may have a contract period of one (1) to five (5) years. If during the first two [2] years of any contract the Consumer Price Index has increased by twelve percent (12%) or more, the State Board of Education is authorized to renegotiate with the contract holder the prices contained in such contracts. The State Board of Education may grant a price increase in the last three (3) years of the contract, provided the publisher certifies that the price is no higher than the lowest contract price the product is currently bid in any other state. The State Board of Education shall have the power to renew or extend contracts for not less than one(1) year nor more than two (2) years; this provision of extension shall be made a part of the publisher's contract, and the State Board of Education may exercise the extension provision by notifying the publisher not less than one (1) year prior to the expiration

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<sup>24</sup>Ibid., Sections 80-1707 through 80-1708.

of the original contract. [Acts 1975, No. 302, § 9, p. 763; 1977, No. 645, § 1, p. —.]<sup>25</sup>

Additional consideration of other texts is provided for by the following governing statute.

80-1710. Addition of books or materials to approved list upon petition by school districts.—If five [5] or more school districts petition the State Board of Education to add a book, series of books or other instructional materials to the approved list of State adoptions in a subject area, the Director shall appoint a committee of five [5] specialists in said subject area to study the books or other instructional materials in question. If this committee of specialists recommends the adoption of such books, series of books or other instructional materials to the State approved list, such additions shall be made. This provision shall not be applicable to books or instructional materials that have been considered previously and rejected by a State Adoption Committee.

If a school district wishes to offer a course for which there are no State adopted instructional materials or to use new and innovative materials for an already existing course, it may petition the Director for permission to obtain such materials. To be considered, such a request must be accompanied by a course outline, the name of the textbook and other instructional materials desired, and a statement of the objectives of the course. The Director may either approve or reject such request after consultation with the Division of Instructional Services. This provision shall not be applicable to books or instructional materials that have been considered previously and been rejected by the State Adoption Committee. [Acts 1975, No. 302, § 10, p. 763.]<sup>26</sup>

Local school districts are charged with selecting texts in the following manner.

80-1711. Distribution of textbook list—Adoption units—Local selecting committees—Change of textbooks prohibited.—The Director shall as soon as possible after the adoption by the State Board of Education, and at such other times as he may deem expedient publish and send to the Board of Directors of each school district in the State a copy of all the lists of textbooks and instructional materials adopted by the State Board of Education and currently in effect. Each school district shall be and constitute an adoption unit, and each adoption unit is authorized and directed through its board of directors to select textbooks and instructional materials as hereafter provided. The Board of Directors of each adoption unit shall.

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<sup>25</sup>Ibid., Section 80-1709.

<sup>26</sup>Ibid., Section 80-1710.

within thirty (30) days after receiving notice of adoption from the State Board of Education, appoint a Selecting Committee or Committees for each subject area set up for adoption by the State Board of Education. Each local Selecting Committee shall be composed of not less than three (3) teachers or supervisors who are then employed in the school district. It shall be the duty of the local Selecting Committees to select textbooks and instructional materials as may be directed by the State Board of Education from the State list of adopted textbooks and materials for each subject. Each book, series of books, or type of instructional materials shall be for the full period of the contract as determined by the State Board of Education, and no school may change textbooks or instructional materials in any subject after its original adoption has been made until the expiration of the contract period which shall include any extension of the contract by the State Board of Education as herein authorized. [Acts 1975, No. 302, § 11, p. 763.]<sup>27</sup>

Provisions for offering textbooks for adoption are defined as follows.

80-1715. Conditions for offering textbooks for adoption, sale or exchange—Penalties.—Before any person, company, or corporation shall offer any school textbooks or other instructional materials in grades 1 through 12, inclusive for adoption, sale or exchange in the State of Arkansas, said person, company, or corporation shall comply with the following conditions:

(a) File a bid and contract form in the office of the Director showing the prices at which the publisher will agree to sell to the State of Arkansas during the contract period. When the State Board of Education accepts any or all the textbooks or other instructional materials in the bid and contract form and so certifies in the form, the bid and contract form becomes an official contract. The State Board of Education shall have the authority to permit publishers to bid current wholesale prices or the State Board can require publishers to bid lowest existing contract prices at which the textbooks or other instructional materials are being sold elsewhere in the country. The State Board of Education shall certify in the call for bids whether they want current wholesale prices or lowest contract prices. In the bid and contract form the publisher shall certify the date on which the current wholesale prices were established and submit a list of all existing adoptions bid showing such items as may be requested by the State Board of Education on an official form furnished by the State Board of Education. At the end of each fiscal year of the contract the publisher shall submit a certified list of all State contracts made during the fiscal year just closed, on all books or other instructional materials on which the publisher has a contract in this State. The publisher must automatically reduce prices in Arkansas whenever a contract is made at a lower price in another state after the date of contract in Arkansas. If any publisher makes a contract on a special or state

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<sup>27</sup>Ibid., Section 80-1711.

edition in another state after the date of contract in Arkansas, the State Board of Education in Arkansas shall have the authority to require the publisher to supply the special or state edition to the schools of Arkansas at the contract price in other states.

(b) The State Board of Education shall have authority to require publisher to bid an exchange price on all basal or supplementary textbooks bid, and all the price regulations applying herein to regular contracts shall apply to exchange prices.

(c) File a copy of each textbook and other instructional material in printed or manuscript form in the office of the Director. All items offered for sale in Arkansas pursuant to this Act [§§ 80-1701–80-1717] shall be equal in quality to those deposited in the office of the Director and shall meet the minimum standards and specifications set up by the State Board of Education.

(d) The State Board of Education shall have authority to assess any publisher any amount of damage to the State of Arkansas for failure to comply with the terms of his contract or any published regulation of the State Board of Education, provided the publisher has been given a hearing before the State Board of Education regarding the assessment of damages. Failure to reimburse the State within 6 months after notice of assessment hereunder has been served on the publisher shall give the State Board of Education the right to cancel all the contracts of the publisher involved and to forbid said publisher to bid in any future adoptions for a period of up to five (5) years from the date of assessment of damages hereunder.

(e) It shall be illegal for the Director, his assistant, or any employee connected with the Department of Education, any member of any Selecting Committee, or any member of any school board, to accept or receive any money, gift, or any property or favor whatsoever from any person, firm or corporation, or any agent thereof, offering for sale any item pursuant to this Act, or from any person in any way interested in such sale. Any person violating this provision shall, upon conviction, be punished by a fine not to exceed Five Hundred Dollars (\$500) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment. Any fines collected under this provision shall be deposited in the State Treasury to the credit of the Public School Fund.

(f) It shall be illegal for any teacher in the public schools of Arkansas or any county or city superintendent of schools, or any member of any school board or board of education, or any person or persons connected with the public school system of Arkansas in any capacity, to be in any way interested in the profits, proceeds, or sale of any school textbooks or other instructional materials used in the schools of Arkansas under his charge or with which he is connected in any official capacity provided that this shall not apply nor have any reference to royalties or fees received by a person from the sale of school books or other instructional materials of which he is himself the author. Any person violating this provision shall, upon conviction, be fined not less than Fifty Dollars (\$50), nor more than Two Hundred Dollars (\$200). Any fines collected under this provision shall be deposited in the State Treasury to the credit of the Public School Fund.



(g) It shall be illegal for any person to directly or indirectly, promise or offer to give or cause to be promised, offered, or given, any money, goods, bribe, present, or reward, or any valuable thing whatsoever, to the Director, his assistant, or any employee connected with the Department of Education, or any school board member, teacher, or other person with the intent of influencing his or her decision on any question, matter, cause or proceedings in the selections of any textbooks or other instructional materials. Any person violating this provision shall, upon conviction, be punished by a fine not exceeding Five Hundred Dollars (\$500) or by imprisonment in the county jail for not more than six (6) months or by both such fine and imprisonment. Any fine collected under this provision shall be deposited in the State Treasury to the credit of the Public School Fund.

(h) No textbooks, library books, or other items purchased by the State to be distributed free to the public schools of the State pursuant to this Act shall be subject to the Arkansas Gross Receipts Tax (sales tax) or the Arkansas Compensating Tax (use tax). [Acts 1975, No. 302, § 15, p. 763.]<sup>28</sup>

In addition, the State Board of Education is empowered to make rules and regulations for the administration of the textbook selection process.

80-1717. Promulgation of rules and regulations—Additional duties of board.—In addition to the powers hereinbefore granted to the State Board of Education to provide textbooks and other instructional materials to the pupils of the public schools of the State, the State Board of Education is authorized and empowered to make rules and regulations for the distribution of such items to the various school districts of the State; to require reports from school directors and county supervisors on the use and distribution of such items; and to do whatever else may be necessary for the general welfare of the public school textbook and instructional materials system, and in order to acquire such items at the lowest possible cost. Such powers hereinbefore set out are cumulative and not restrictive. The State Board of Education shall have power to include any additional regulations in the bid and contract form that the State Board of Education deems best for the administration of this Act [§§ 80-1701–80-1717] and any such regulations included in the bid and contract forms and accepted by the publisher shall be construed as a part of this Act. Publishers shall be required to comply with such regulations as if such additional regulations were included in this Act. [Acts 1975, No. 302, § 17, p. 763.]<sup>29</sup>

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<sup>28</sup>Ibid., Section 80-1715.

<sup>29</sup>Ibid., Section 80-1717.

### California

California has recently enacted an instructional materials law which covers a wide variety of standards and procedures in the selection process. Textbook selection is divided between grades one through eight and high school. The following is a legal presentation of the textbook selection process.

By constitutional provision, the State Board of Education of California is empowered with the responsibility to select texts in grades one through eight.

Art. IX. Sec. 7.5. The State Board of Education shall adopt textbooks for use in grades one through eight throughout the State, to be furnished without cost as provided by statute. [New section adopted June 2, 1970.]<sup>30</sup>

According to the Education Code, provisions for the adoption of texts recognizes the establishment of broad minimum standards and general educational guidelines for the selection of instructional materials.

60000. It is the intent and purpose of the Legislature in enacting this part to provide for the acquisition of instructional materials for the elementary and secondary schools.

60001. For the purposes of any provision of the California Constitution which requires the adoption of textbooks for use in the elementary schools, the state board shall have the power, subject to the provisions of this division, to adopt one or more separate series of textbooks or instructional materials systems for any of the several courses offered in the elementary schools, or for any combination of such courses. For such purposes the term "elementary schools" shall have the meaning prescribed by Section 60024.

60002. The Legislature hereby recognizes that, because of the common needs and interests of the citizens of this state and the nation, there is a need to establish broad minimum standards and general educational guidelines for the selection of instructional materials for the public schools. but that, because of economic, geographic, physical, political, educational, and social diversity, specific choices about instructional materials need to be made at the local level.

60003. The Legislature further recognizes that by enacting Chapter 1 (commencing with Section 51000) and Chapter 2 (commencing with Section

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<sup>30</sup>California, Constitution, art. IX, sec. 7.5.

51200) of Part 28 of this division it gave school district governing boards broad powers to establish courses of study, and that school district governing boards must have the ability to choose instructional materials which are appropriate to their courses of study.<sup>31</sup>

The following criteria guide the selection of materials.

60040. When adopting instructional materials for use in the schools, governing boards shall include only instructional materials which, in their determination, accurately portray the cultural and racial diversity of our society, including:

(a) The contributions of both men and women in all types of roles, including professional, vocational, and executive roles.

(b) The role and contributions of American Indians, American Negroes, Mexican Americans, Asian Americans, European Americans, and members of other ethnic and cultural groups to the total development of California and the United States.

(c) The role and contributions of the entrepreneur and labor in the total development of California and the United States.

60041. When adopting instructional materials for use in the schools, governing boards shall include only instructional materials which accurately portray, whenever appropriate:

(a) Man's place in ecological systems and the necessity for the protection of our environment.

(b) The effects on the human system of the use of tobacco, alcohol, narcotics and restricted dangerous drugs as defined in Section 11032 of the Health and Safety Code, and other dangerous substances.

60042. When adopting instructional materials for use in the schools, governing boards shall require such materials as they deem necessary and proper to encourage thrift, fire prevention and the humane treatment of animals and people.

60043. When adopting instructional materials for use in the schools governing boards shall require, when appropriate to the comprehension of pupils, that textbooks for social science, history or civics classes contain the Declaration of Independence and the Constitution of the United States.

60044. No instructional materials shall be adopted by any governing board for use in the schools which, in its determination, contains:

(a) Any material reflecting adversely upon persons because of their race, color, creed, national origin, ancestry, sex or occupation.

(b) Any sectarian or denominational doctrine or propaganda contrary to law.

60045. All instructional materials adopted by any governing board for use in the schools shall be, to the satisfaction of the governing board, accurate, objective, and current and suited to the needs and comprehension of pupils at their respective grade levels.

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<sup>31</sup>California, Education Code, Part 33, Sections 60000 through 60003.

60046. Any governing board may conduct an investigation of the compliance of any instructional materials which it adopts with the requirements of this article.

60047. In the event that after the good faith acquisition of instructional materials by a governing board, the instructional materials are found to be in violation of this article and the governing board is unable to acquire other instructional materials which meet the requirements of this article in time for them to be used when the acquired materials were planned to be used, the governing board may use the acquired materials but only for that academic year.<sup>32</sup>

Limitations in the selection process are defined as follows.

60070. No school official shall require any pupil, except pupils in classes for adults to purchase any instructional material for the pupils' use in the school.

60071. No publisher or manufacturer of instructional materials, nor any of his representatives, shall offer or give any emolument, money, or other valuable thing, or any inducement, to any school official to directly or indirectly introduce, recommend, vote for, or otherwise influence the adoption or purchase of any instructional material.

60072. No school official shall accept any emolument, money, or other valuable thing, or any inducement to directly or indirectly introduce, recommend, vote for, or otherwise influence the adoption or purchase of any instructional material.

60073. Any publisher or manufacturer of instructional materials or his representative, or any school official who violates any of the provisions of this article is guilty of a misdemeanor. Any school official who violates any of the provisions of this article shall, in addition to any other penalty, be removed from his official position.

60074. Nothing in this article shall be construed to prevent any publisher, manufacturer, or agent from supplying for purposes of examination necessary sample copies of instructional materials to any school official.

60075. Nothing in the article shall be construed to prevent a school official from receiving sample copies of instructional materials.

60076. Nothing contained in this article shall be construed to prohibit or restrict a school official from receiving royalties or other compensation from the publisher or manufacturer of instructional materials written, designed, or prepared by such school official, and adopted or purchased by any governing board, other than compensation paid as commission to the school official for negotiating sales to governing boards. No district shall have or claim the right to receive any such royalty or other compensation due to any school official employed by the district unless the instructional

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<sup>32</sup>Ibid., Sections 60040 through 60047.

material was written or prepared during the normal schoolday during which the school official is required by the district to be on duty.<sup>33</sup>

60100. No provision of this part shall be construed as requiring the district board of any district to provide instructional materials, free of charge, or otherwise, to any adult enrolled in a class for adults, nor shall any of the provisions of this part be construed as applicable to instructional materials required or authorized to be used by adults in classes for adults.

60101. No provision of this part shall be construed as prohibiting any district board, or any county library, from ordering and purchasing from their own funds such instructional materials as they may require, including state listed materials at a price equal to that computed pursuant to Section 60243.

60102. No provision of this division shall be construed as prohibiting any district board, or any public library, from ordering and purchasing from their own funds such instructional materials as they may require, including state listed materials at a price equal to that computed pursuant to Section 60243.<sup>34</sup>

Specific provisions for drug education are contained within the selection process.

60110. It is the intent of the Legislature that the State Board of Education give high priority to the adoption of instructional materials on drug education for classroom use by teachers and pupils. Such materials shall be designed to assist the teacher in presenting instruction on drug education and to meet the needs of pupils at their respective grade levels. Such materials shall be accurate, objective, and current.

60111. The Department of Education shall establish an information center of current drug education materials which may be used by school districts and teachers for instruction on drug education. The information center shall include, but not be limited to, all the following: current state and federal drug laws; samples of effective courses of study, curriculum guides, teaching materials, reference materials, reports of current and school district policies related to drug education.<sup>35</sup>

Procedures for the selection of elementary texts are as follows.

60200. The state board shall adopt instructional materials for use in kindergarten and grades one through eight for a use period for governing boards of six years, commencing the first year of use in a district, subject to Section 60265 and to the following provisions:

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<sup>33</sup>Ibid., Section 60070 through 60076.

<sup>34</sup>Ibid., Sections 60100 through 60102.

<sup>35</sup>Ibid., Sections 60110 through 60111.

(a) At least biennially, adoptions shall be made for all applicable levels for the following categories: (1) language arts, (2) mathematics, (3) reading, (4) science, (5) social science, (6) bilingual or bicultural subjects, and (7) any other subject, discipline, or interdisciplinary areas for which the state board may determine the need and desirability for instructional materials to promote the maximum efficiency of pupil learning.

(b) While categories may be designated to be adopted in alternate years, the state board shall adopt not less than five but no more than 15 of any of the following for each subject in each grade: (a) instructional materials, (b) instructional materials systems, (c) instructional materials sets, and, (d) a combination of instructional materials, instructional materials systems, and instructional materials sets, as the state board may select. However, less than five items per subject, per grade may be adopted when the state board establishes that adequate materials are not available for certain grades and subjects. The state board shall not adopt more than two instructional materials sets for each subject in each grade.

(c) In the event that a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district board to use its instructional materials' credits to purchase, through the Department of Education, materials as specified by the state board, in accordance with standards and procedures established by the state board.

(d) The state board shall establish procedures to provide the most open and flexible submissions, as to timing and processing, to provide collections of instructional materials which, when taken as a whole, illustrate diverse points of view; represent cultural pluralism and provide a broad spectrum of knowledge, information, and a cross section of opinions; and allow for a combination of approaches and media to best meet the goals of a program and the needs of pupils.

(e) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, for a period of not less than four years following the date of initial use as established pursuant to subdivision (i). All previous adoptions shall be integrated on lists and made available by subject and level.

(f) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever the state board designates that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations; however, all materials so designated shall be adopted subject to the limitations of subdivision (b).

(g) A composite listing in the format of an order form may be used to meet the requirements of this section.

(h) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(i) The state board shall, at the time of initiating the call for bids for instructional materials, establish the date upon which such state-adopted materials shall initially be available for use by the pupils.

60201. In approving and maintaining lists of adopted instructional materials at least biennially, the state board shall, pursuant to subdivision (e) of Section 60200, do any one or more of the following, when applicable:

(a) Retain any instructional materials from a previous list and biennially make any adjustment in prices based on information provided pursuant to Section 60223.

(b) Delete from the lists any instructional material which it determines is obsolete pursuant to Section 60500 or which receive no order from any district board during the previous biennial period.

(c) Add instructional materials not previously submitted for adoption, or materials previously submitted which have been revised to comply with any recommendations of the state board.

60202. Before final adoption of any instructional materials not currently listed, the state board shall make any instructional materials proposed for adoption available for public inspection for not less than 30 days at display centers designated by the Superintendent of Public Instruction. There shall be an adequate distribution of display centers throughout the state.

60203. The state board shall give the commission a public hearing before making any adoption of instructional materials for use in the elementary schools of the state.

60204. The commission shall:

(a) Recommend curriculum frameworks to the state board.

(b) Develop criteria for evaluating instructional materials submitted for adoption so that the materials adopted shall adequately cover the subjects in the indicated grade or grades and which comply with the provisions of Article 3 (commencing with Section 60040) of Chapter 1 of this division. Such criteria shall be public information and shall be provided in written or printed form to any person requesting such information.

(c) Study and evaluate instructional materials submitted for adoption.

(d) Recommend to the state board instructional materials which it approves for adoption.

60205. The commission may, in order to fulfill its duties pursuant to Section 60204, appoint task forces or committees of subject matter experts to assist and advise them. Each task force or committee appointed by the commission shall include classroom teachers as defined in Section 33150 and representatives of the various ethnic groups and of the various types of school districts. Accurate records of the advice and recommendations of each task force or committee member shall be maintained by the commission, and made available to the state board at its request.<sup>36</sup>

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<sup>36</sup>Ibid., Sections 60200 through 60205.

The procedures for the adoption of high school texts are as follows.

60400. The district board of each district maintaining one or more high schools shall adopt textbooks for use in the high schools under its control. Only textbooks of those publishers who comply with the requirements of Article 3 (commencing with Section 60040) and Article 4 (commencing with Section 60060) of Chapter 1 of this part and of Section 60226 may be adopted by the district board.

60401. The state board shall designate the kinds of books which shall be classified as textbooks for the purposes of this chapter. All textbooks and instructional materials systems and instructional materials sets which include textbooks, shall be purchased directly from the publisher or manufacturer at any of its offices in the State of California or from any publishers' or manufacturers' depository in the State of California. The provision of the preceding sentence, with respect to the purchase of textbooks, is subject to the numerical limitations of subdivision (f) of Section 60061. Instructional materials not classified as textbooks, and instructional materials sets or instructional materials systems not including textbooks may be purchased by district boards without reference to the provisions of this chapter.

60402. The textbooks adopted shall be put into use in the district not later than the school year next following their adoption.

60403. After any textbook has been adopted by the district board and placed in use, it shall be retained in use for a period of not less than three years after the date of its adoption, as shown by the official records of the district board.

60404. The clerk, secretary, or other person named by the district board for the purpose shall purchase textbooks on order of the district board of the high school district and shall examine the books when received. If they are found to be correct and in accordance with the order, a warrant shall be drawn for the proper amount, including the cost of transporting the textbooks, against any fund of the high school district available for the purpose and remitted to the publisher within 30 days after receipt of the books.<sup>37</sup>

Conditions for furnishing texts to high school students are as follows.

60410. The district board of each high school district may fix a charge not to exceed the cost of the books to the high school district for books furnished pupils in classes for adults. In lieu of fixing such charge, the board may lend books to such pupils and require the making of deposits by the pupils, the amount of deposit made by a pupil to be refunded to him upon the return by him of the books lent him in good condition, reasonable wear and tear excepted.

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<sup>37</sup>Ibid., Sections 60400 through 60404.



60411. The district board of each high school district shall purchase textbooks and may purchase supplementary books for the use of pupils enrolled in the high schools of the district. The textbooks and supplementary books shall at all times remain the property of the district, and shall be supplied to the pupils for use without charge.

60412. The district board of each high school district shall make all necessary provisions and arrangements to place the books purchased within easy reach and accessible for the use of all the pupils in the schools under its control.

60413. The district board of a high school district may at the end of any school term sell textbooks and supplementary books owned by the district to pupils of the district at prices which shall not exceed the actual value of the textbooks and supplementary books. The district board shall not require pupils of the district to purchase textbooks or supplementary books offered for sale by the board.

The proceeds of the sales shall be placed in the county treasury to the credit of the general fund of the school district.

60414. The district board of a high school district may purchase textbooks for the use of students residing in the district but attending a public high school in an adjoining state which does not furnish textbooks free of charge. Such textbooks shall remain the property of the district in which the students reside and shall be issued to such students at the discretion of the district board of that district.<sup>38</sup>

### Colorado

Colorado has no state-wide textbook selection procedure. Local school districts are basically responsible for selecting which texts are used in the public schools. The general procedure for the selection of textbooks from the statutory viewpoint is as follows.

Section 16 of the State Constitution restricts the General Assembly and the State Board of Education from prescribing which textbooks are to be used in the public schools.

Art. IX. Sec. 16. Textbooks in public schools. – Neither the general assembly nor the state board of education shall have power to prescribe textbooks to be used in the public schools.<sup>39</sup>

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<sup>38</sup>Ibid., Sections 60410 through 60414.

<sup>39</sup>Colorado, Constitution, art. IX, sec. 16.

Although there are references to textbooks within the governing statutes of the State of Colorado, there are no direct provisions for the selection process of textbooks. Therefore, the selection is the responsibility of local boards of education.<sup>40</sup>

22-32-110. Board of education - specific powers. (1) In addition to any other power granted to a board of education of a school district by law, each board of education of a school district shall have the following specific powers, to be exercised in its judgment:

(c) To provide furniture, equipment, library books, and everything needed to carry out the education program.

(o) To provide free use of textbooks to all school-age pupils enrolled in the public schools of the district.

(r) To exclude from each school and school library any books, magazines, papers, or other publications which, in the judgment of the board, are of immoral or pernicious nature.<sup>41</sup>

### Connecticut

Connecticut is another state where textbook selection is a function of local school districts. Local boards of education are basically responsible for text adoptions. Statutory provisions for the selection of texts are as follows.

The selection of textbooks is a function of the board of education of each school district.

Sec. 10-228. Free textbooks, supplies, material and equipment. The board of education of each school district shall purchase such books, either as regular texts, as supplementary books or as library books, and such supplies, material and equipment, as it deems necessary to meet the needs of instruction in the schools of the district. In day and evening schools of

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<sup>40</sup>Personal correspondence from Roy G. Brubacher, Assistant Commissioner, Office of Field Services, Department of Education, Denver, Colorado, 21 March 1978.

<sup>41</sup>Colorado, Revised Statutes (1973), Title 22, Chapter 32, Section 22-32-110.

elementary and secondary grades, all books and equipment shall be loaned and materials and supplies furnished to all pupils free of charge, subject to such rules and regulations as to their care and use as the board of education prescribes.<sup>42</sup>

Change of textbooks requires a two-thirds vote of the local board of education.

Sec. 10-229. Change of textbooks. No board of education of any town shall change any textbooks used in the public schools except by a two-thirds vote of all the members of the board, notice of such intended change having been previously given at a meeting of such board held at least one week previous to the vote upon such change.<sup>43</sup>

### Delaware

Within the State of Delaware, the State Board of Education, with specific criteria as a reference, is responsible for the selection of textbooks. The textbook selection process is defined as follows.

Selection of textbooks is a function of the State Board of Education.

#### § 122. Rules and regulations

(b) The Board shall prescribe rules and regulations:

(6) Governing the choice of textbooks and other instructional materials to be used in all public elementary and secondary schools of the State by adopting a set of criteria, which the reorganized school districts of the State shall apply to the selection of all such material prior to the acquisition or development and use of those materials. The decision of the State Board shall be final as to whether any textbooks or other instructional materials do, in fact, abide by the prescribed criteria.<sup>44</sup>

The set of criteria called for in the governing statutes of the State of Delaware is as follows.

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<sup>42</sup>Connecticut, General Statutes Annotated, Title 10, Section 10-228.

<sup>43</sup>Ibid., Section 10-229.

<sup>44</sup>Delaware, Revised Code Annotated (1974), Title 14, Section 122.

### Specific Criteria

A textbook as defined in the preceding section should adhere to these minimal criteria to be acceptable:

1. Relates to the basic and identifiable philosophy of our democratic society by its
  - a. demonstrated consideration for the human worth and dignity of all people
  - b. positive commitment to equal rights and responsibilities for all citizens
  - c. unbiased concern for religious, political, and intellectual freedom
  - d. objective reflection of the multiethnic character and cultural diversity of our society
  - e. concerted lack of racial and sexual stereotyping.
2. Reflects valid and quality scholarship by
  - a. meaningful organization and emphasis of content
  - b. accurate, authoritative, and realistic presentation of factual material
  - c. historical reliability and soundness
  - d. inclusion of contemporary research
3. Conforms to formulated school philosophy and is consistent with established curricular goals pertaining to the
  - a. determination of content to be studied—WHAT
  - b. rationale for content selection—WHY
  - c. designation for appropriate student groups—WHOM
  - d. methods and techniques of instruction—HOW
4. Supports and complements basic educational objectives within a specific subject area and/or classroom by its
  - a. relevancy to subject goals and objectives
  - b. compatibility with reading and ability levels of students
  - c. stimulus to the interest of all students
  - d. challenge to continued educational progress of all students
  - e. provision for appropriate and optional student learning activities
  - f. appropriateness to both male and female students in a non-stereotyped manner.
5. Includes adequate and relevant study aids such as
  - a. contemporary illustrations, graphs, charts and maps
  - b. glossary and index

- c. suggestions for reinforcing learning: questions, simulations, exercises, independent and optional projects and study.
- 6. Reflects high quality of typography, illustration, and other aesthetic considerations.
- 7. Consists of durable materials and is economical in cost.
- 8. Represents quality and verifiable content and features when compared with a variety of contemporary materials.
- 9. Constitutes selection through a process involving
  - a. persons primarily responsible for use in the classroom, and
  - b. persons responsible for articulation of instructional program.
- 10. Contributes to a better understanding of the subject or area under study.
- 11. Indicates that an accompanying teacher's manual serves as a point of departure for that phase of instruction and does not comprise the substance of the total instructional activities.
- 12. Employs the metric system known as the International System of Units (SI) as the standard units of measurement.
- 13; Avoids computational conversions between the U. S. Customary Units System and the International System of Units (SI). The material may provide for informal comparisons of metric units with U. S. Customary Units.<sup>45</sup>

#### District of Columbia

The District of Columbia's selection procedure for textbooks is provided for by congressional enactments and governing codes. Basic responsibility for the selection of texts is a function of the Board of Education. The legal basis for textbook selection is as follows.

Special provisions for textbooks and instructional materials in the District of Columbia public schools are set forth in Public Act Number 41 of the 71st Congress (January 31, 1930).

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<sup>45</sup>Delaware State Department of Public Instruction, Textbook Criteria and Basic Principles for Minimizing Sexual and Other Biases in the Instructional Program, Dover, Delaware, adopted by State Board of Education, September 25, 1975, pp. 8-11.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Board of Education of the District of Columbia shall provide pupils of the public elementary schools, public junior high schools, and public senior high schools of the District of Columbia free of charge with the use of all textbooks and other necessary educational books and supplies.

Sec. 2. That all books purchased by the Board of Education shall be held as property of the District of Columbia and shall be loaned to pupils under such conditions as the Board of Education may prescribe.

Sec. 3. That parents and guardians of pupils shall be responsible for all books loaned to the children in their charge and shall be held liable for the full price of every such book destroyed, lost, or so damaged as to be made unfit for use by other pupils.

Sec. 4. That the Board of Education shall purchase for use in the public schools only such books and supplies as shall have been duly recommended by the superintendent of schools and formally approved by the Board of Education.

Sec. 5. That the Board of Education, in its discretion, is authorized to make exchange or to sell books or other educational supplies which are no longer desired for school use.

Sec. 6. That the Board of Education is authorized to provide for the necessary expenses of purchase, distribution, care, and preservation of said textbooks and educational supplies out of money appropriated under authority of this Act.

Sec. 7. That this Act shall take effect from the date of its passage.  
Approved, January 31, 1930.<sup>46</sup>

Using Public Act Number 41 as a legal basis, the District of Columbia Code places the responsibility of providing texts with the Board of Education of the District of Columbia which have been recommended by the superintendent of schools and formally approved by the Board.

#### § 31-401. Textbooks and supplies furnished without charge

The Board of Education of the District of Columbia shall provide pupils of the elementary schools, public junior high schools, and public senior high schools of the District of Columbia free of charge with the use of all textbooks and other necessary educational books and supplies. Jan. 31, 1930, ch. 32, § 1, 46 Stat. 62.<sup>47</sup>

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<sup>46</sup>U. S., Congress, Senate, An Act to Provide Books and Educational Supplies Free of Charge to Pupils of the Public Schools of the District of Columbia, Pub. A. 41, 71st Cong., 2d sess., 1930, S. 234, p. 62.

<sup>47</sup>District of Columbia, Code Encyclopedia Completely Annotated, Title 31, Chapter 4, Section 31-401.

§ 31-404. Limitation on purchases

The Board of Education shall purchase for use in the public schools only such books and supplies as shall have been duly recommended by the superintendent of schools and formally approved by the Board of Education. Jan. 31, 1930, ch. 32, § 4, 46 Stat. 62.<sup>48</sup>

Florida

Within the State of Florida, a council concerned with instructional materials and the State Board of Education are charged with the responsibility of selection of textbooks. Statutory provisions for selecting textbooks are as follows.

A State Instructional Materials Council is provided for by the governing statutes.

233.07 State instructional materials councils; appointment; term; compensation

(1) Each school year, not later than April 15, the State Board of Education shall, upon nomination by the Commissioner of Education pursuant to s. 20.15(10), appoint state instructional materials councils composed of persons actively engaged in teaching or in the supervision of teaching in the public elementary or secondary schools and representing the major fields and levels in which instructional materials are used in the public schools of the state and, in addition, lay citizens not professionally connected with education. There shall be councils for the recommendation of instructional materials for the elementary and secondary grades as may be necessary and recommended by the Commissioner of Education.

(a) There shall be nine members on each council: Four shall be classroom teachers, two shall be lay persons, one shall be a school board member, and two shall be supervisors of teachers.

(b) The commissioner shall recommend annually the areas in which instructional materials shall be submitted for adoption. One of the factors upon which he shall base his decision shall be the desires of the districts.

(2)(a) Effective June 30, 1974, all current appointments are terminated and no current appointee shall be reappointed except pursuant to the conditions prescribed in this section. Any current appointee who has served for a period of time equal to 2 or more years as of that date shall not be eligible for reappointment, and no member shall serve more than two consecutive terms on any council. Initial appointments shall be for staggered terms with one-third of the membership of each council being appointed

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<sup>48</sup>Ibid., Section 31-404.

for 1 year, one-third for 2 years, and one-third for 3 years. Thereafter, all appointments shall be for 3 years. All vacancies shall be filled in the manner of the original appointment for only the time remaining in the unexpired term. At no time shall a school district have more than one representative on a council, it being the intent of the Legislature to involve representatives from the maximum number of school districts in the process of instructional materials selection. The Commissioner of Education and a member of the Department of Education whom he shall designate shall be additional and ex officio members of each council.

(b) The names and mailing addresses of the members of the state instructional materials councils shall be made public when appointments are made.

(c) Each lay member of the councils shall receive compensation at the rate of \$50 per day for each day of actual service. The district school board shall be reimbursed for the actual cost of substitute teachers for each work-day that a member of its instructional staff is absent from his assigned duties for the purpose of rendering service to the state instructional materials council. In addition, council members shall be reimbursed for traveling expenses, and per diem shall be paid to nonlay council members as provided in s. 112.061 for actual service in meetings of councils called by the Department of Education. Payment of such compensation and travel expenses shall be made by the State Treasurer from the appropriation for the administration of the instructional materials program, on warrants to be drawn by the State Comptroller upon requisition approved by the commissioner.

(3) It is the intent of the Legislature that all other references in the law to the state instructional materials council shall apply to each council created by this section.

(4) For purposes of this chapter, "instructional materials" are defined as items that by design serve as a major tool for assisting in the instruction of a subject, course, or activity. These items may be available in bound, unbound, kit, or package form and may consist of hard or softbacked textbooks, consumables, learning laboratories, slides, films and filmstrips, recordings, manipulatives, and other commonly accepted instructional tools.<sup>49</sup>

The restrictions and duties of the Council members are defined as follows:

#### 233.08 Affidavit of members of state instructional materials council

Before transacting any business, each member of a district or state council shall make an affidavit, to be filed with the Commissioner of Education, that:

(1) He will faithfully discharge the duties imposed upon him as a member or as a secretary of the council.

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<sup>49</sup>Florida, Statutes Annotated, Title 15, Chapter 233, Section 233.07.



(2) He has no interest, and while a member of the council he will assume no interest, in any publishing or manufacturing organization which produces or sells instructional materials.

(3) He is in no way connected, and while a member of the council he will assume no connection, with the distribution of such instructional materials.

(4) He is not pecuniarily interested, and while a member of the council he will assume no pecuniary interest, directly or indirectly, in the business or profits of any person engaged in manufacturing, publishing, or selling instructional materials designed for use in the public schools.

(5) He will not accept any emolument or promise of future reward of any kind from any publisher or manufacturer of instructional materials or his agent or anyone interested in, or intending to bias his judgment in any way in, the selection of any materials to be adopted.

#### **233.09 Duties of each state instructional materials council**

The duties of each state instructional materials council shall be:

(1) Place and time of meeting.—To meet at the call of the Commissioner of Education, at a place in the state designated by him, and to remain there in session for a period of time, not to exceed 20 days, for the purpose of evaluating and recommending instructional materials for adoption by the state. All meetings of state instructional materials councils shall be announced publicly through the news media of the state at least 2 weeks prior to the date of convening. The announcement of the meeting shall include the agenda of the meeting. All meetings of the councils shall be open to the public.

(2) Organization.—To elect a chairman and vice chairman for each adoption. An employee of the Department of Education shall serve as secretary to the council and keep an accurate record of its proceedings. All records of district recommendations, council motions and votes, and summaries of council debate shall be incorporated into a publishable document and shall be available for public inspection and duplication.

(3) Rules and regulations.—To adopt rules and regulations for evaluating instructional materials submitted by publishers and manufacturers in each adoption. Included in these rules and regulations shall be the following minimum standards:

(a) Provisions which afford each publisher or manufacturer or his representative an opportunity to present to members of the state instructional materials councils the merits of each instructional material submitted in each adoption;

(b) Forms on which a district superintendent or his designee shall submit the results of the district instructional materials council's recommendations; and

(c) Guidelines for district instructional materials councils, professional associations, and individuals for evaluating instructional materials for state adoption; however, the following minimum standards shall apply:

1. No district instructional materials council shall consist of fewer than six persons. Two shall be lay persons and three shall be teachers, it being the intent of the legislature that councils of six or more persons include at least one-third lay persons and one-half teachers as a part of their total membership.

2. No district instructional materials council shall deny any publisher or manufacturer or his representative time to present his product equal to that time given any other publisher or manufacturer or his representative.

3. Evaluations by district instructional materials councils, professional associations, and individuals shall be submitted in such form and manner as shall be prescribed by the state council. Each instructional material shall be ranked numerically as to its choice in relation to all other materials of the same type evaluated, and no two textbooks in the same subject area may receive the same numerical rating.

4. District instructional materials councils, professional associations, and individuals who evaluate instructional materials and submit their findings and recommendations to the state council shall do so in accordance with the guidelines provided in subsection (4).

(4) Evaluation of instructional materials.—To evaluate carefully all instructional materials submitted, to ascertain which instructional materials, if any, submitted for consideration best implement the curricular objectives of the schools of the state. The councils shall file with the Commissioner of Education a written statement of the criteria and procedures used in the evaluation of instructional materials, and certified copies of such statements shall be made available to the public upon request. The state instructional materials councils shall be prohibited from conducting their assigned duties until such written statements are on file with the Commissioner of Education.

(a) When recommending instructional materials for use in the schools, each council shall include only instructional materials which, in its determination, accurately portray the cultural and racial diversity of our society, including men and women in professional, vocational, and executive roles, and the role and contributions of the entrepreneur and labor in the total development of Florida and the United States.

(b) When recommending instructional materials for use in the schools, each council shall include only materials which accurately portray, whenever appropriate, man's place in ecological systems, including the necessity for the protection of our environment and conservation of our natural resources and the effects on the human system of the use of tobacco, alcohol, controlled substances, and other dangerous substances.

(c) When recommending instructional materials for use in the schools, each council shall require such materials as it deems necessary and proper to encourage thrift, fire prevention, and humane treatment of people and animals.

(d) When recommending instructional materials for use in the schools, each council shall require, when appropriate to the comprehension of pupils,

that textbooks for social science, history, or civics classes contain the Declaration of Independence and the Constitution of the United States. No instructional materials shall be recommended by any council for use in the schools which, in its determination, contain any matter reflecting unfairly upon persons because of their race, color, creed, national origin, ancestry, sex, or occupation.

(e) All instructional materials recommended by each council for use in the schools shall be, to the satisfaction of each council, accurate, objective, and current and suited to the needs and comprehension of pupils at their respective grade levels.

(f) When recommending instructional materials for use in the schools, each council shall have the recommendations of all districts which submit evaluations on more than half the materials submitted for adoption in that particular subject area aggregated and presented to the members to aid them in the selection process; however, such aggregation shall be weighted in accordance with the full-time equivalent student percentage of each district. No instructional materials shall be evaluated or recommended for adoption unless each of the district councils shall have been loaned the specified number of samples.

(g) In addition to relying on statements of publishers or manufacturers of instructional material, any council may conduct, or cause to be conducted, an independent investigation as to the compliance of submitted materials with the requirements of this section.

(h) In the event that, after good faith acquisition of instructional materials by a district school board the instructional materials are found to be not in accordance with the requirements of this subsection, and the school board is unable to acquire other instructional materials which meet the requirements of this subsection in time for them to be used as intended, the school board may use the acquired materials, but only for that academic year.

(5) Report of Council.—After a thorough study of all data submitted on each instructional material, and after each member of the appropriate council has carefully evaluated each instructional material to present a written report to the Department of Education, such report shall be made public. The report shall include:

(a) A description of the procedures used in determining the instructional materials to be recommended to the Department of Education.

(b) Recommendations of instructional materials for each grade and subject field in the curriculum of public elementary and secondary schools in the state in which adoptions are to be made. If deemed advisable, the council may include such other information, expression of opinion, or recommendation as would be helpful to the department. If there is a difference of opinion among the members of the council as to the merits of any instructional materials, any member may file an expression of his individual opinion.<sup>50</sup>

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<sup>50</sup>Ibid., Sections 233.08 through 233.09.

Standards for selection and term of adoption are prescribed by the following statutes.

**233.165 Standards for selection**

(1) In the selection of textbooks, library books, and other reading material used in the public school system, the standards used to determine the propriety of the material shall include:

(a) The age of the children who normally could be expected to have access to the material.

(b) The educational purpose to be served by the material.

(c) The degree to which the material would be supplemented and explained by mature classroom instruction as part of a normal classroom instructional program.

(2) No books or other material containing hardcore pornography or otherwise prohibited by s. 847.012 shall be used in the public school system of the State of Florida.<sup>51</sup>

**233.17 Term of adoption for instructional materials**

The term of adoption of any instructional materials shall be for a 4-year period beginning on April 1 following the adoption, unless the contract is extended as prescribed in s. 233.16(2).<sup>52</sup>

A declaration of which texts are adopted is defined as follows.

**233.33 Announcement of adoption of instructional materials**

The Department of Education, as soon as practicable after it has adopted instructional materials and completed all contracts and approved bonds for the faithful performance of contracts for furnishing or supplying instructional materials for use in the public schools of the state, shall issue a statement announcing such fact to the people of the state.<sup>53</sup>

Allocation and use of instructional materials are herein described.

**233.34 Use of instructional materials allocation; instructional and instructional-related materials, library, and reference books.—**

(1) On or before July 1 each year, the commissioner shall certify to the superintendent of each district the estimated allocation of state funds for instructional materials, computed pursuant to the provisions of chapter 236 for the ensuing fiscal year.

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<sup>51</sup> Ibid., Section 233.165.

<sup>52</sup> Ibid., Section 233.17.

<sup>53</sup> Ibid., Section 233.33.

(2) Each school district shall use the annual allocation for the purchase of instructional materials included on the state adopted list. However, up to 25 percent of the annual allocation may be used for the purchase of instructional materials, including library and reference books, not included on the state adopted list and for the repair and renovation of textbooks and library books.

(3) Each district school board shall adopt policies, and each superintendent shall implement procedures, that will assure the maximum use by the students of the materials herein authorized.

(4) District school boards are authorized to issue purchase orders subsequent to May 1 in an aggregate amount not to exceed 90 percent of the current year's allocation, for the purpose of expediting the delivery of instructional materials which are to be paid for from the ensuing year's allocation.

(5) In any year in which the total allocation for a district has not been expended or obligated prior to June 30, the district shall carry forward such unobligated amount and shall add this amount to the next year's allocation.<sup>54</sup>

The local superintendents are given certain responsibilities in regard to instructional materials.

#### 233.43 Duties of superintendent relating to instructional materials.—

The duties and responsibilities of each superintendent for the requisition, purchase, receipt, storage, distribution, use, conservation, records, and reports of, and management practices and property accountability concerning, instructional materials shall be prescribed by policies of the district school board, and such policies shall also provide for an evaluation of any instructional materials to be requisitioned that have not been used previously in the schools of the district.<sup>55</sup>

Limitations in regard to the adoption of textbooks are specified.

#### 233.45 Penalty for school officers dealing in textbooks.—

No superintendent, school board member, or any person officially connected with the government of or direction of public schools, or teacher thereof, shall receive during the months actually engaged in performing duties under his contract any private fee, gratuity, donation, or compensation, in any manner whatsoever, for promoting the sale or exchange of any schoolbook, map, or chart in any public school, or be an agent for

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<sup>54</sup>Ibid., Section 233.34.

<sup>55</sup>Ibid., Section 233.43.

the sale, or the publisher of any school textbook or reference work, or be directly or indirectly pecuniarily interested in the introduction of any such textbook, and any such agency or interest shall disqualify any person so acting or interested from holding any school office whatsoever, and the person so offending shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; provided, that this section not be construed as preventing the adoption of any book written in whole or in part by a Florida author.<sup>56</sup>

### Georgia

Georgia's State Board of Education publishes a multiple listing of textbooks upon the recommendation of a committee to examine books. Special provisions also allow for the publishing of texts by the State Board of Education. Statutes dealing with the textbook selection process are as follows.

The State Board of Education is authorized to prescribe textbooks to be used in the public schools of Georgia.

#### 32-707 Board to prescribe textbooks for public schools. Multiple listings

The State Board of Education is authorized and empowered to prescribe by regulation the textbooks to be used in the various grades in the public schools of this State, including the elementary grades and high school grades. The board may provide, by regulation, for multiple listings of books for use in the various grades, and may, in its discretion, authorize the county school superintendent or the superintendent of independent school systems to exercise a choice as between books so listed or adopted for any particular grade. (Acts 1937, pp. 896, 897.)<sup>57</sup>

Guidelines and a committee to examine books are provided for by governing statutes.

#### 32-708 Selection and purchase of free textbooks. Books to contain nothing partisan or sectarian

The State Board of Education may provide for the selection and purchase of free textbooks either by multiple listings or uniform adoption or by any other method that will enable the acquiring of acceptable books at the lowest possible cost: Provided, such adoption or multiple listings shall in

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<sup>56</sup>Ibid., Section 233.45.

<sup>57</sup>Georgia, Code Annotated (1975), Title 32, Chapter 32, Section 32-707.

no event constitute a binding contract until ratified in writing by the Board of Education. None of said books so purchased shall contain anything of a partisan or sectarian nature. (Acts 1937, pp. 896, 897.)

#### 32-709 Committees of educators to examine books and recommend

The State Board of Education shall select a committee or committees of educators actually engaged in public school work in this State to examine textbooks and make recommendations thereon to the State Board of Education. Such committee or committees shall consist of such number of educators as the board may deem advisable, not exceeding five in each instance. They shall serve for such time and for such duties as the State Board of Education may prescribe, and receive such compensation as may be fixed by the State Board of Education. (Acts 1937, pp. 896, 897.)<sup>58</sup>

Textbooks to be adopted are open to competitive bids.

#### 32-717 Purchases, etc., on competitive bids

All purchases, listings, or adoptions of textbooks for use in the public schools of the State, as authorized herein, shall be made upon competitive sealed bids or proposals, after notice of the time and place of receiving same has been published once in each of at least three newspapers of general circulation published in the State, at least 30 days prior to the date set for receiving proposals, as determined by the State Board. (Acts 1937, pp. 896, 899.)<sup>59</sup>

The State Board of Education may publish textbooks.

#### 32-718. Board may publish textbooks

If the State Board of Education shall find it advantageous to the State to provide for publishing any or all of the textbooks required to be used in the public schools of this State, it is authorized and empowered so to do, under such reasonable rules and regulations as it may prescribe, and to that end may enter upon such contracts as may be necessary for that purpose. The board may also purchase any second-hand books now or hereafter used in Georgia as it may deem advisable on such basis as may be reasonable.<sup>60</sup>

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<sup>58</sup>Ibid., Sections 32-708 through 32-709.

<sup>59</sup>Ibid., Section 32-717.

<sup>60</sup>Ibid., Section 32-718.

Hawaii

The State of Hawaii operates a state system of public education. Textbook selection, for the most part, is a function of the Department of Education. Statutory provisions for text adoption are as follows.

The Department of Education of the State of Hawaii is responsible for formulating policy and exercising control over the public school system which can include the selection of textbooks.

§ 296-2 Department of education; board of education; superintendent of education. There shall be a principal executive department to be known as the department of education which shall be headed by an elected executive board to be known as the board of education. The board shall have power in accordance with law to formulate policy and to exercise control over the public school system through its executive officer, the superintendent of education. The superintendent shall be appointed and may be removed by a majority vote of the members of the board and shall serve as secretary of the board. [L 1966, c 50, pt of § 5]<sup>61</sup>

§ 296-12 Rules, regulations. Subject to chapter 91, the board of education may adopt rules and regulations not contrary to law, for the government of all teachers, educational officers, other personnel, and pupils, and for carrying out the general scheme of education and for the transaction of its business. [L 1896, c 57, § 8; RL 1925, § 289; RL 1935, § 706; RL 1945, § 1707; RL 1955, § 37-7; am L 1965, c 96, § 25 and c 175, § 5]<sup>62</sup>

Publication of pamphlets, reports and other such certificates may be printed or cause to be printed by the Department of Education.

§ 296-17 Publications by department. The department of education may prepare or cause to be prepared, printed, and published, such reports, pamphlets, duplicate certificates, outlines of courses, etc., as in the discretion of the department may seem advisable, and sell or dispose of the publications. All sums of money received from the sale of the publications

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<sup>61</sup>Hawaii, Revised Statutes (1976 Replacement), Title 18, Section 296-2.

<sup>62</sup>Ibid., Section 296-12.



shall be deposited to the credit of the general fund of the State. [L 1931, c 215, §§ 1, 2; RL 1935, § 710; RL 1945, § 1713; RL 1955, § 37-13; am L 1965, c 175, § 10]<sup>63</sup>

The County of Maui is allowed to purchase textbooks that have been prescribed by the Department of Education.

§ 61-2 General powers and limitations of counties. Each county shall have the following powers and be subject to the following liabilities and limitations:

- (7) School books. The county of Maui may, insofar as the finances of the county permit, purchase school books prescribed by the department of education, for the use, without charge, of elementary school students in the county.<sup>64</sup>

### Idaho

Within the State of Idaho, textbook selection is a function of the State Board of Education with the assistance of a State Textbook and Improvement of Instruction Committee. Statutory regulations in the selection of texts are as follows.

A legal basis for selection of texts is within the framework of the Idaho Code.

33-118. Courses of study—Textbooks.—The state board shall prescribe the minimum courses to be taught in all elementary and secondary schools, public, private and parochial, and shall cause to be prepared and issued, such syllabi, study guides and other instructional aids as the board shall from time to time deem necessary. The board shall also determine how and under what regulations textbooks shall be adopted for the public schools. [1963, ch. 13, § 18, p. 27.]<sup>65</sup>

Idaho also has a State Textbook and Improvement of Instruction Committee whose responsibilities are screening, evaluating, and recommending textbooks for adoption to the State Board of Education. Instructional materials that are published in each subject area

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<sup>63</sup>Ibid., Section 296-17.

<sup>64</sup>Ibid., Section 61-2.

<sup>65</sup>Idaho, Code, Title 33, Chapter 1, Section 33-118.

are evaluated on a five-year selection cycle. Materials that are considered worthy are placed on the State Adopted List and are approved by the Idaho State Board of Education. Individual school districts evaluate the list of instructional materials and select those materials designed to fit their needs.<sup>66</sup>

The State Textbook and Improvement of Instruction Committee is organized as follows.

#### Organization of the Committee

- A. The Idaho State Board of Education is the appointing authority for members of the State Textbook and Improvement of Instruction Committee.
- B. Regular Committee appointments are for a six-year term. Specialists are appointed for a one-year term. Currently, there are fifteen (15) members on the Committee.

Membership on the Committee includes a representative from each of the state's institutions of higher learning: Boise State University, Idaho State University and the University of Idaho.

A curriculum area consultant from the Division of Instruction of the State Department of Education is appointed to the Committee for a one-year term. The term coincides with the adoption cycle. The main concern of this member is in the area of his/her specialization.

Other Committee members represent Idaho school administrators, school trustees, the State Department of Education and classroom teachers.

The Executive Secretary is an appointive position, and this member is recommended by the State Superintendent of Public Instruction and approved by the State Board of Education.

- C. The chairman and vice chairman of the State Textbook and Improvement of Instruction Committee are elected annually by the Committee members.<sup>67</sup>

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<sup>66</sup>Idaho State Department of Education, Division of Instruction, Idaho State Textbook and Improvement of Instruction Committee Handbook, Boise, Idaho, 1976, p. 1.

<sup>67</sup>*Ibid.*, pp. 1-2.

The duties and responsibilities of the Committee are as follows.

#### **Duties and Responsibilities of the Committee**

The Committee provides a service to public schools by evaluating and screening instructional materials intended for use in classrooms. The evaluation and screening is based on criteria developed through the cooperative effort of the Committee, the State Department of Education and the public schools. Adopted materials should be reasonably consistent with directions in curriculum as ascertained by the Committee through research and analysis of current trends.

As a service to schools, the evaluation and screening procedure results in the recommendation for adoption of a number of texts and other instructional materials in a designated subject area. This approach is known as a multiple adoption. A multiple adoption is consistent with the belief that a variety of materials has value and usefulness within a specific subject area. Therefore, the intent of the adoption process is to generally approve all materials meeting the established criteria and to reject those items which are unsuited for use in the designated subject area.

In keeping with the desire to provide assistance to schools without inhibiting new and different approaches to instruction, provision is made by the State Department of Education for the experimental use of instructional materials not on the adopted list. Participation in this program is approved through the office of the Executive Secretary of the State Textbook and Improvement of Instruction Committee.

The work of the Committee is usually conducted in two (2) regularly scheduled meetings of one (1) week each within a period of a designated year. These are generally identified as the Spring and Fall meetings.

The Spring meeting provides the opportunity for the representatives from interested publishers to present instructional materials that the publishers wish to be adopted. Procedures for presentations, as established by the Committee, are made known to the publishers by the Executive Secretary. The Spring meeting is open to all interested persons. The general intent of the meeting is one of obtaining information given by the representatives of the publishers and questioning by Committee members as to the nature of the materials. Specific evaluation and adoption of materials is not the major purpose of this meeting.

The Fall meeting is given to the specific evaluation, screening and recommending of instructional materials. At this meeting, and prior to the recommendations, any interested person or representative of a group may speak to the Committee in regard to the value and usefulness of materials under consideration. Requests for such presentations are to be made prior to November 1 so that the agenda for the Committee work may be adequately planned.

Special meetings of the Committee are called by the chairman when appropriate. All meetings are conducted by the chairman, with the Executive Secretary responsible for keeping a record of deliberations and decisions.

The Executive Secretary represents the Committee between meetings. Official decisions of the Committee are determined by a majority vote of members present at the specific meeting.

Each Committee member is responsible for the evaluation and screening of the presented materials. Committee members have an obligation to involve others in the evaluation process so a broad spectrum of judgment provides background information for decision making. Working cooperatively with the State Department of Education, it is the intent of the Committee to involve professional subject area personnel in the evaluation and screening of related materials. Procedures for such involvement are established by the Committee and implemented by the Executive Secretary.

The Committee shall prepare criteria to be used in the selection of materials for recommendation for adoption. Such criteria shall be circulated to interested publishers. Evaluation forms as prepared by the Committee are available for use by individual Committee members.

All requests for consideration of materials by the Committee are submitted to the Executive Secretary. In fulfilling his/her responsibilities, the Executive Secretary provides information to the publishers and their representatives and assumes those duties assigned by the Committee.

The office of the Executive Secretary is the official depository for materials to be considered for adoption. In addition, publishers are requested to provide copies of all materials to all Committee members. In cases where large, expensive units are involved, publishers may furnish copies to only the Executive Secretary, Boise State University, Idaho State University, and the University of Idaho so that the materials are easily available to interested persons.<sup>68</sup>

### Illinois

Illinois' selection procedure is based upon the State Superintendent of Public Instruction publishing a list of instructional materials available upon the recommendations of a Textbook Advisory Committee. Local school districts are charged with the function of adopting printed instructional materials from the list. The process for textbook selection is provided for as follows.

Selection of texts and the legal basis thereof is stated in Chapter 122, Article 28 of Illinois' governing statutes.

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<sup>68</sup>Ibid., pp. 2-3.

### § 28-1. Copies and prices filed—Bond

No person shall offer any school instructional materials for adoption, sale or exchange in the State until he has complied with the following conditions:

1. He shall file in the office of Superintendent of Public Instruction, annually, by July 15, a sworn statement of the usual list price, the lowest net wholesale price, and the lowest net exchange price at which the material is sold or exchanged for old material on the same subject of like grade and kind but of a different series taken in part payment thereof.

2. He shall file with the Superintendent of Public Instruction a bond payable to the People of the State of Illinois with a surety company authorized to do business in the State of Illinois as surety thereon, in a penal sum to be determined by the Superintendent of Public Instruction, not less than \$2000 nor more than \$10,000 conditioned as follows:

(a) That he will furnish annually any of the materials listed in any annual statement filed by him to any school district and any school corporation in this State at the lowest net prices contained in the statements and that he will maintain said prices uniformly throughout the State.

(b) That he will reduce such net prices in Illinois whenever they are reduced elsewhere in the United States, and that he will file with the office of the Superintendent of Public Instruction a sworn statement of reductions made elsewhere, so that at no time shall any instructional material so filed and listed by him be sold in this State at a higher net price than is received for such material elsewhere in the United States.

(c) He shall not enter into any understanding, agreement or combination to control the prices or to restrict competition in the sale of instructional materials.

Amended by P. A. 77-2180, § 1, eff. Oct. 1, 1972.

### § 28-2. Approval of bond—Duration

The bond required by Section 28-1 shall be approved by the Attorney General and shall continue in force for 5 years after its filing, at or before the expiration of which period a new bond shall be given or the right to continue business within the State shall be forfeited. 1961, March 18, Laws 1961, p. 31, § 28-2.

### § 28-3. Lists sent to school authorities by Superintendent of Public Instruction

The Superintendent of Public Instruction shall, within 30 days after the filing of any list and bond, send a copy of the list to the regional superintendent of each educational service region. Each supplier of printed instructional materials shall send 125 copies of lists of materials and prices to the Office of the Superintendent of Public Instruction.

Amended by P. A. 77-2180, § 1, eff. Oct. 1, 1972; P. A. 79-1057, § 5, eff. Oct. 1, 1975.

### § 28-4. Notice of violations—Proceedings for forfeiture of bond

The school board of each district wherein the instructional materials listed under the provisions of this Article have been adopted shall notify the

Superintendent of Public Instruction of any violation of any of the conditions contained in said bond. The Superintendent of Public Instruction shall thereupon notify the person guilty of the violation and if such person disregards the notification and fails to comply with the requirements of the contract the Superintendent of Public Instruction shall institute legal proceedings for the forfeiture of the bond.

Amended by P. A. 77-2180, § 1, eff. Oct. 1, 1972.

#### § 28-5. Inducement to teacher or officer forbidden

No person shall secure or attempt to secure the sale of any school instructional materials in any school district by rewarding or promising to reward any teacher or by securing for him any position in any other school. No person shall offer to give any emolument, money or other valuable thing, promise of work or any other inducement to any teacher or school officer for any vote or promise of vote or for the use of his influence for any school instructional materials to be used in this State.

This section does not prevent any person from submitting, or any school officer or teacher from receiving, a reasonable number of copies of printed instructional materials for examination with a view to obtaining information as to the book or series of books for which such officer shall give his vote.

Amended by P. A. 77-2180, § 1, eff. Oct. 1, 1972.

#### § 28-6. Adoption of books by school boards—Record—Change

School boards shall adopt such printed instructional materials listed under the provisions of this Article, as are needed for use in the schools, and shall thereupon make a record of the adoption thereof in their proceedings and within 30 days thereafter shall file a copy of such record in the office of each regional superintendent of schools. Printed instructional materials adopted by any board under the provisions of this Article shall be used exclusively in all public high schools and elementary schools for which they have been adopted except that supplementary or abridged or special editions thereof may be used when necessary.

Amended by 1967, March 7, Laws 1967, p. 30, § 1; P. A. 77-2180, § 1, eff. Oct. 1, 1972; P. A. 79-1057, § 5, eff. Oct. 1, 1975.<sup>69</sup>

The State Superintendent of Education shall appoint a Textbook Advisory Committee to advise the Illinois Office of Education on matters pertaining to the administration of the Secular Textbook Loan Program.<sup>70</sup>

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<sup>69</sup>Illinois, Annotated Statutes (Smith-Hurd, 1961), Chapter 122, Article 28, Sections 28-1 through 28-6.

<sup>70</sup>State Board of Education, Illinois Office of Education, Implementation Guidelines for the Illinois Textbook Loan Program and Rules and Regulations to Govern the Administration and Operation of the Illinois Textbook Loan Program, Springfield, Illinois, September 1977, p. 6.

Indiana

Within the State of Indiana, textbook selection is under the general guidelines of the State Board of Education and a Commission on Textbook Adoptions. Local school districts adopt or select texts from a multiple adoption list. A statutory description of the textbook selection process is as follows.

Within the confines of the Indiana State Board of Education's authority is the power to appoint a commission concerned with textbooks.

20-1-1-1 [28-101]. Indiana state board of education created—Appointment—Powers and duties—Meetings—Chairman—Divisions of board—Transfer of powers, duties, property and funds of old board.—The Indiana state board of education, hereinafter referred to as the board, is hereby created, and the state board of education, heretofore in general charge of the schools of the state of Indiana, is hereby terminated.

For the efficient performance of the duties incident to the control and supervision of the schools of the state, said board shall be divided into three [3] commissions—a commission on general education to consist of six [6] appointive members and the state superintendent of public instruction, a commission on textbook adoption to consist of six [6] appointive members and the state superintendent of public instruction, and a commission on teacher training and licensing to consist of six [6] appointive members and the state superintendent of public instruction. The state superintendent of public instruction shall be the chairman of the board [and] of each commission. The board and each commission shall meet at such times as it shall determine. The first meeting of the board and each commission shall be called by the state superintendent of public instruction within thirty [30] days of the effective date [May 1, 1945] of this act, and appointive terms of office shall commence on May 1.<sup>71</sup>

The Commission on Textbook Adoptions is defined as follows:

20-1-1-3 [28-103]. Commission on textbook adoptions—Powers and duties—Members—Qualification.—The commission on textbook adoptions shall exercise all the powers and duties heretofore exercised by the state board of education with reference to the adoption and approval of textbooks and teaching materials in the public schools.

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<sup>71</sup>Indiana, Statutes Annotated (Burns), Title 20, Section 20-1-1-1.

The appointive members of said commission shall include a minimum of four [4] persons actively employed in the schools of Indiana. [Acts 1945, ch. 330, § 3, p. 1529.]<sup>72</sup>

20-10.1-9-1. Adoption of textbooks.—The commission on textbook adoptions shall make multiple adoptions of textbooks and enter into contracts with publishers to furnish these textbooks at fixed prices. For each subject for which credit is given in the public schools and for each grade, the commission shall adopt a multiple list of seven [7] textbooks except as provided in section 5 [20-10.1-9-5] of this chapter. The commission shall make regular adoptions and contracts each year for every subject in one [1] subject classification according to the schedule in section 4 [20-10.1-9-4] of this chapter. These contracts shall be for a period of five [5] years. The commission on textbook adoptions in its call for bids may make an exception and exempt a certain textbook category or categories in nonrequired subject matter areas from being bid. [IC 1971, 20-10.1-9-1, as added by Acts 1975, P. L. 240, § 1, p. 1289; 1975, P. L. 241, § 3, p. 1327.]<sup>73</sup>

Conditions for adoption in the selection process are provided for by governing statutes.

20-10.1-9-5. Incomplete multiple list.—Whenever less than seven [7] textbooks satisfactory to the commission on textbook adoptions are available for a particular subject and grade at the regular time of adoption for the subject, the commission shall adopt as many textbooks as it finds are satisfactory. When this occurs, the commission may, at any time, make additions to the incomplete list for that subject as new textbooks become available until the list is complete with seven [7] textbooks. A contract for a textbook which was adopted after regular adoption to augment an incomplete list shall expire at the same time as contracts which were entered into at the regular time for adoptions of textbooks in that subject. [IC 1971, 20-10.1-9-5, as added by Acts 1975, P. L. 240, § 1, p. 1289.]

20-10.1-9-6. New subjects.—Whenever a new subject is to be taught in any grade, the commission on textbook adoptions shall, at its next adoption meeting, adopt a multiple list of, and contract for, textbooks for that subject and grade. A contract entered into under this section shall extend only for the period of time required for its expiration to coincide with the expiration of contracts for other subjects in the same classification. A multiple list adopted under this section shall contain seven [7] textbooks if the commission finds that seven [7] or more satisfactory textbooks are submitted. Otherwise, section 5 [20-10.1-9-5] of this chapter applies. [IC 1971, 20-10.1-9-6, as added by Acts 1975, P. L. 240, § 1, p. 1289.]

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<sup>72</sup>Ibid., Section 20-1-1-3.

<sup>73</sup>Ibid., Section 20-10.1-9-1.



**20-10.1-9-7. Notice of meeting.**—Thirty [30] days prior to a meeting for the purpose of making textbook adoptions and contracts, the commission shall publish a notice of the meeting in two [2] daily newspapers each of which has paid circulation of not less than eighty-five thousand [85,000] and is published in Indiana. This notice shall include a complete list of all subjects and grades for which textbooks are to be adopted at the meeting. [IC 1971, 20-10.1-9-7, as added by Acts 1975, P. L. 240, § 1, p. 1289.]

**20-10.1-9-8. Submission of bids.**—The commission on textbook adoptions shall accept sealed bids from publishers who wish to have their textbooks adopted under this chapter [20-10.1-9-1–20-10.109-26]. A bid shall state the exact price at which each textbook would be furnished and every bid shall be accompanied by specimen copies of every textbook proposed and by an affidavit. The bidder shall state in the affidavit that:

(1) he is not connected in any way with any other publisher bidding at the same time;

(2) he has no pecuniary interest in any other publisher bidding at the same time; and

(3) he is not a party to any agreement which would deny the benefits of competition to the people of the state. [IC 1971, 20-10.1-9-8, as added by Acts 1975, P. L. 240, § 1, p. 1289.]

**20-10.1-9-9. Power to reject bids.**—The commission on textbook adoption may reject any and all bids. When a bid proposes more than one [1] textbook, the commission may accept it with regard to some proposed textbooks and reject it with regard to others. [IC 1971, 20-10.1-9-9, as added by Acts 1975, P. L. 240, § 1, p. 1289.]

**20-10.1-9-10. Examination of textbooks.**—The commission on textbook adoptions shall carefully examine all books which are submitted for approval and shall meet at the time and place announced for the purpose of finally adopting textbooks for use in each subject and grade for which notice has been given. In making its examination, the commission shall consider the amount and quality of materials, subject matter, style of binding, mechanical execution, and price. [IC 1971, 20-10.1-9-10, as added by Acts 1975, P. L. 240, § 1, p. 1289.]

**20-10.1-9-11. Restriction on textbook content.**—The commission on textbook adoptions shall not approve a textbook which contains anything of a partisan or sectarian character. [IC 1971, 20-10.1-9-11, as added by Acts 1975, P. L. 240, § 1, p. 1289.]

**20-10.1-9-12. Competition fundamental to adoption process.**—The letting of contracts for textbooks shall be upon full and fair competition. Any person or corporation may enter this competition and may bid to furnish any textbook regardless of whether that textbook is used in the schools of the state at the time of bidding. [IC 1971, 20-10.1-9-12, as added by Acts 1975, P. L. 240, § 1, p. 1289.]

20-10.1-9-13. List of adopted books.—The chairman of the commission on textbook adoptions shall notify the school executives of the state of all textbook adoptions immediately after adoptions are made. [IC 1971, 20-10.1-9-13, as added by Acts 1975, P. L. 240, § 1, p. 1289.]

20-10.1-9-14. Publisher's bond.—When a publisher has a textbook or textbooks adopted, he shall immediately post a five thousand dollar [\$5,000] bond, to the acceptance and satisfaction of the governor conditioned on the publisher's adequately and properly furnishing all adopted textbooks in the manner prescribed by the commission and at the quoted prices. If a publisher fails to adequately and properly furnish an adopted textbook, the commission may cancel the adoption of the textbooks. [IC 1971, 20-10.1-9-14, as added by Acts 1975, P. L. 240, § 1, p. 1289.]<sup>74</sup>

Upon approval of a state-adopted list of textbooks, local school districts are charged with the following duties.

20-10.1-9-21. Local textbook selection.—The superintendent of schools shall be responsible for the establishment of procedures for textbook adoption. The procedures shall include, but not be limited to, the involvement of teachers and parents on an advisory committee for the preparation of recommendations for textbook adoptions. The majority of the members of the advisory committee shall be teachers and not less than forty per cent [40%] of the committee shall be parents. These recommendations shall be submitted to the superintendent in accordance with the established procedures in the local school corporation. The governing body, upon receiving these recommendations from the superintendent, shall adopt, from the state textbook adoption lists, a textbook for use in teaching each of the various subjects in the schools under the governing body's jurisdiction. A special committee of teachers and parents may also be appointed to review books, magazines, and audio-visual material used or proposed for use in the classroom to supplement state adopted textbooks, and may make recommendations to the superintendent and the governing body concerning the use of such material. Each textbook selection shall be for an initial period of five [5] years or for as long as the selected textbook's state adoption is effective whichever is less, and any selection may be extended beyond that period for as long as the local superintendent deems the textbook satisfactory and as long as it remains on the appropriate state adopted list. [IC 1971, 20-10.1-9-21, as added by Acts 1975, P. L. 240, § 1, p. 1289; 1975, P. L. 241, § 4, p. 1327.]

20-10.1-9-22. Report of local selections.—After a local superintendent has selected textbooks under this chapter [20-10.1-9-1--20-10.1-9-26], and not later than July 1, when new contracts become effective, he shall forward

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<sup>74</sup>Ibid., Sections 20-10.1-9-5 through 20-10.1-9-14.

to the commission on textbook adoptions a list of these selections for all subjects and grades. The commission shall examine these lists, and, if the commission finds a deviation from the state adopted list, the commission on education shall cancel the accreditation of the offending schools. [IC 1971, 20-10.1-9-22, as added by Acts 1975, P. L. 240, § 1, p. 1289.]<sup>75</sup>

### Iowa

In Iowa, the textbook selection process is basically a local concern. Local boards of education adopt texts for their respective school districts. The textbook selection process is legally described as follows.

Selection of texts is at the discretion of the Board of Directors of each school district.

#### 301.1 Adoption—purchase and sale

The board of directors of each and every school district is hereby authorized and empowered to adopt textbooks for the teaching of all branches that are now or may hereafter be authorized to be taught in the public schools of the state, and to contract for and buy said books and any and all other necessary school supplies at said contract prices, and to sell the same to the pupils of their respective districts at cost, loan such textbooks to such pupils free, or rent them to such pupils at such reasonable fee as the board shall fix, and said money so received shall be returned to the general fund.

Textbooks adopted and purchased by a school district may be made available to pupils attending nonpublic schools upon request of the pupil or the pupil's parent under the same terms as made available to pupils attending public schools.

Amended by Acts 1972 (64 G.A.) ch. 1016, § 43; Acts 1975 (66 G. A.) ch. 153, § 12, eff. Aug. 15, 1975.<sup>76</sup>

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<sup>75</sup>Ibid., Sections 20-10.1-9-21 through 20-10.1-9-22.

<sup>76</sup>Iowa, Code Annotated, Title XII, Chapter 301, Section 301.1.

Limitations are placed upon school officials in regard to the textbook selection process.

### 301.28 Officers and teachers as agents for books and supplies

Text of section effective until January 1, 1978.

It shall be unlawful for any school director, officer, area education director, or teacher to act as agent for any school textbooks or school supplies during such term of office or employment, and any school director, officer, area education agency director, or teacher, who shall act as agent or dealer in school textbooks or school supplies, during the term of such office or employment, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than ten dollars nor more than one hundred dollars, and pay the costs of prosecution.

Amended by Acts 1974 (65 G. A.) ch. 1172, § 116, eff. July 1, 1975.<sup>77</sup>

## Kansas

Textbook selection in the State of Kansas is a function of local school districts. The State legislature relinquished all powers in the textbook selection process. Provisions for adopting texts are as follows.

With the repeal of Chapter 72, Sections 4148-51,<sup>78</sup> the State Board of Education no longer recommends or screens textbooks for public use. Local school districts screen and select textbooks to be used by students in the respective districts.<sup>79</sup> The responsibility for providing texts resides with local school districts.

72-4107. Free textbooks authorized to be provided by school districts; revolving fund for textbooks authorized. The board of education of any school district may provide a revolving fund for the purpose of enabling the purchase, for the use of the students in the schools of the district, the necessary school textbooks. The treasurer of each board of education is

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<sup>77</sup>Ibid., Section 301.28.

<sup>78</sup>Kansas, Statutes Annotated, Chapter 72, Sections 72-4148 through 72-4151.

<sup>79</sup>Personal correspondence from David W. Kester, Director, Legal Services Section, Kansas State Department of Education, Topeka, Kansas, 22 March 1978.

hereby authorized and directed to pay out of said funds all orders lawfully drawn for the purchase of such textbooks.

Each clerk of a board of education shall replace the moneys paid out of the revolving fund with cash received by him, if any, for the books sold to the patrons of said school.<sup>80</sup>

### Kentucky

Kentucky's system of textbook selection is within the auspices of the State Textbook Commission. Selection of texts from a multiple list is the responsibility of local school districts. Statutory provisions for textbook selection are as follows.

The adoption of textbooks is provided for by the governing statutes of Kentucky.

#### 156.400 School subjects; adoption groups; textbook contracts

(1) The superintendent of public instruction shall arrange the elementary and secondary school subjects included in the state courses of study as prescribed by the state board of education into five (5) adoption groups. The five (5) adoption groups shall be arranged as nearly equal in number and purchase cost as possible.<sup>81</sup>

A State Textbook Commission recommends textbooks to be adopted for each subject.

#### 156.405 State textbook commission; organization

(1) The state textbook commission shall consist of the superintendent of public instruction and ten (10) appointive members. The ten (10) members shall be appointed by the state board of education upon the recommendation of the superintendent of public instruction for terms of four (4) years with two (2) appointments each year, except that every fourth year there shall be four (4) appointments. No member shall be eligible to serve more than two (2) full terms consecutively. All vacancies that occur on the state textbook commission shall be filled in like manner for the remainder of the unexpired terms.

(2) Eight (8) of the appointive members of the state textbook commission shall have had not less than five (5) years teaching or supervising experience in the public schools of Kentucky and must have had at the time

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<sup>80</sup>Kansas, op. cit., Section 72-4107.

<sup>81</sup>Kentucky, Revised Statutes Annotated (Baldwin), Title XII, Chapter 156, Section 156.400.

of their appointment at least four (4) years of college training in a recognized institution of higher education. Five (5) members of the commission shall be classroom teachers actively employed in the public schools of Kentucky as teachers in subject field or fields for which the commission will select books. Two (2) members shall be principals, supervisors, or superintendents of public schools or public school systems. One (1) member shall be a member of the faculty of a public institution of higher education engaged in teacher education. Two (2) members shall be lay citizens. In selecting the members of the state textbook commission the superintendent of public instruction shall give due regard to representation from rural and urban areas and both elementary and secondary levels when both educational levels are included in the subject field or fields for which adoptions are to be made. The lay citizens shall have children in the public elementary or secondary schools at the time of appointment.

(3) Members of the state textbook commission shall serve without remuneration except reimbursement for their actual expenses while attending commission meetings.

(4) The meetings of the state textbook commission shall be open to the public.

(5) Not later than July 15 each year the superintendent of public instruction shall call the state textbook commission into session. The members of the state textbook commission shall elect one (1) of its members as chairman and shall adopt rules and regulations for the procedure of the commission. The superintendent of public instruction shall be the secretary of the commission.<sup>82</sup>

The State Textbook Commission is required to publish a multiple list of books for local school districts from which textbooks are adopted.

#### 156.435 Adoption of lists; rejections; execution of contracts; publication of lists

(1) The state textbook commission shall, not later than September 20 of any adoption year, select, approve, and publish a list of ten (10) books or programs in each subject and grade, taking into account the needs of the various types of school organizations. The commission shall not list more than one (1) book or program for the same subject and grade from the same person, firm, or corporation.

(2) The state textbook commission shall have the authority to reject any book which contains subversive material or information that is offered for listing or adoption. If the commission finds on the multiple list any book which contains subversive materials or information, provided the publisher of such a book has been given written notice by the secretary of the commission not less than thirty (30) days prior to the meeting, the textbook

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<sup>82</sup>Ibid., Section 156.405.

commission shall have authority to remove the book from the state multiple list. The state textbook commission shall have the authority to add books to the state list when the number of books on the list is less than ten (10) per subject and grade or when the list does not contain books for subjects added to the state courses of study.

(3) The superintendent of public instruction shall make and execute contracts for the selected books with the publishers on or before January 1 following the approval of the books selected by the commission. Except as described heretofore in KRS 156.400, all contracts shall run for five (5) years.

(4) The state textbook commission, on or before May 1, shall designate books or programs on the state multiple list for each subject and grade for use in the school district or districts that decline or fail to make textbook adoptions on or before April 15.

(5) The superintendent of public instruction shall prepare a multiple list of the selected books or programs and publish same and send a copy to the superintendent of each county and independent school district in Kentucky on or before October 15 of each adoption year.<sup>83</sup>

Rules and regulations for adoption of texts are subject to the following conditions.

#### 156.437 Subjects designation; rules for listing and adopting subjects

(1) The state board of education, upon the recommendation of the superintendent of public instruction, may designate subjects in the state courses of study for which programs may be listed by the state textbook commission and adopted by the county and independent school districts in lieu of the number of books as stipulated in subsection (1) of KRS 156.435; subsections (2) and (3) of KRS 156.440; subsections (1) and (2) of KRS 156.472; subsections (1) and (2) of KRS 156.474 and 156.476.

(2) The state board of education, upon the recommendation of the superintendent of public instruction, shall have the authority to prescribe rules and regulations for the listing by the state textbook commission, adoption by local adoption units, the purchase of subject programs for the pupils in the state public schools.<sup>84</sup>

#### 156.440 Textbook samples; adoption of basal texts; certification of lists

(1) Textbook publishers, upon the request of the superintendents of the county and independent school districts, shall furnish to the local boards of education the requested sample copies of their books that were selected and placed on the state multiple list of textbooks by the textbook commission.

(2) The board of education of each county and independent school district shall, upon the recommendation of its superintendent and not later than April 15 of any adoption year, select from the state multiple list books

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<sup>83</sup>Ibid., Section 156.435.

<sup>84</sup>Ibid., Section 156.437.

or programs for each subject and grade to be used as a basal text, in its school system for a period of five (5) years.

(3) County and/or independent school district or districts, however, may decline to make textbook adoptions. Such a school district or districts that decline or fail to make textbook adoptions on or before April 15 shall use the books or programs on the state multiple list designated by the state textbook commission for each subject and grade for the adoption period.

(4) After the local board of education has adopted the basal textbooks for use of the district and not later than April 20, the superintendent of schools shall send to the superintendent of public instruction a complete list of books adopted properly certified by the chairman and secretary of the board of education.<sup>85</sup>

**156.445** Only approved books to be used as basal texts; when changes effective

No textbook shall be used in any public school in Kentucky as a basal textbook unless it has been approved and listed on the state multiple list of textbooks by the state textbook commission. Any changes of textbooks made by the state textbook commission shall not become effective until grades and classes of the respective county and independent school districts have completed work for which the adopted book then in use was originally intended. Nothing in this section shall apply to the supplementary books that are needed from time to time.<sup>86</sup>

Limitations are placed upon school officials and others by the following governing statute.

**156.465** Reward for adoption of books forbidden

No person shall secure or attempt to secure the adoption of any school textbook in any school district in this state by rewarding or promising to reward, directly or indirectly, any person in any public school in the state. No person shall offer or give any emolument to any person in any school district for any vote or promise to vote, or the use of his influence, for any school textbook to be used in this state.<sup>87</sup>

Multiple adoption of texts is subject to the following conditions.

**156.474** Multiple textbook adoptions

(1) The state board of education, upon the recommendation of the superintendent of public instruction, shall have the authority to prescribe

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<sup>85</sup>Ibid., Section 156.440.

<sup>86</sup>Ibid., Section 156.445.

<sup>87</sup>Ibid., Section 156.465.



the conditions whereby a school district may make multiple textbook adoptions for the different school subjects by grades.

(2) The state board of education, upon the recommendation of the superintendent of public instruction, shall have the authority to prescribe the rules and regulations to govern the purchase of the multiple-adopted textbooks for the school district. The superintendent of public instruction, subject to the approval of the state board of education, may purchase the textbooks from the publishers whose books have been adopted by the school district for grades kindergarten through twelve (12) and distribute them without cost to the pupils attending the free public schools in the school district.<sup>88</sup>

### Louisiana

In Louisiana, a state system of textbook selection is provided for by statutory law.

The State Board of Education is responsible for textbook adoption procedures. Provisions for textbook selection are as follows.

The adoption of textbooks falls under the auspices of the State Board of Education.

#### § 7. Regulations for government of public schools; adoption and distribution of textbooks; contracts with publishers

The state board of education shall prepare courses of study, rules, by-laws, and regulations for the government of the public schools of the state, which shall be enforced by the parish superintendents and the several parish school boards.

The state board of education shall exercise administrative control and supervision over the adoption, distribution, and use of free textbooks as provided by R. S. 17:351 through 17:353, and shall adopt such rules and regulations governing their use by schools, parish school boards, and superintendents of education as may be necessary. The state board of education shall adopt lists of basal textbooks. In its administration of textbook regulations, the said state board shall enforce uniform use of the books from the adopted lists. All contracts with publishers shall be awarded on a competitive basis. Each such contract shall be made without determinate date of expiration and shall be so made as to run without change until properly terminated. Each contract shall be so made as to authorize either party to terminate it upon ninety days' notice. To carry out the intent of this section, the state board of education is authorized to rewrite its existing contracts with publishers in such terms as to remove the definite date of termination and otherwise bring them into harmony with this Section. The mode of procedure for the announcement of bids, examining books, and

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<sup>88</sup>Ibid., Section 156.474.

awarding contracts shall be under the control of the state board of education. Publishers shall maintain a depository in the state and distribute books to the several parish school boards on requisition of the state superintendent of education. Failure or lack of efficiency on the part of any publisher in such distribution shall be sufficient cause for the cancellation of his contract.<sup>89</sup>

Specific procedures for text adoption are contained in the following state statutes.

**§ 351. Free school books and other materials of instruction**

A. The State Board of Elementary and Secondary Education shall prescribe and adopt school books and other materials of instruction, which it shall supply without charge to the children of this state at the elementary and secondary levels out of funds appropriated therefor by the legislature in accordance with the requirements of Article VIII, Section 13(A) of the Constitution.

B. The board also shall prescribe and supply schoolbooks and other materials of instruction for use by students attending vocational-technical schools and programs under the jurisdiction of the board.

Amended by Acts 1975, No. 646, § 1.

**§ 352. Books, films, other school materials: screening required**

A. The State Board of Elementary and Secondary Education, the State Department of Education, or either of these shall take such action as is necessary to assure that all school books, films, and booklets related thereto, other similar audio-visual devices, and any other similar materials of instruction are thoroughly screened, reviewed and approved as to their content by the State Board of Elementary and Secondary Education and the local parish or city school board concerned.

B. The State Board of Elementary and Secondary Education shall maintain a copy of all approved textbooks and teaching materials, and such textbooks and teaching materials shall be available for public inspection during regular office hours.

C. The State Board of Elementary and Secondary Education shall adopt rules and regulations to carry out the provisions of this Section.

D. Whoever intentionally violates any provision of this Section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars or by imprisonment for not to exceed six months, or both.

Amended by Acts 1975, No. 646, § 1.<sup>90</sup>

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<sup>89</sup>Louisiana, Statutes Annotated, Revised (West), Title 17, Section 7.

<sup>90</sup>*Ibid.*, Sections 351 through 352.

Within the Orleans Parish, a special statute relates to textbook selection for the Orleans Parish Schools.

§ 126. Courses of study and textbooks; authority to adopt

The Orleans Parish School Board has authority to prepare courses of study for use in public schools of Orleans Parish, subject to the approval of the state board of education, and to adopt textbooks for use in the public schools of Orleans Parish, subject to the approval of the state board of education. As amended Acts 1960, 3rd Ex. Sess., No. 4, § 1.<sup>91</sup>

Maine

Maine's system of textbook selection is within the confines of the local school districts. There is no state-wide system of textbook selection. Statutory requirements in the textbook selection process are as follows.

The power to select textbooks resides with the individual district superintendent upon the approval of the local school committee.

§ 161. Powers and duties of superintendents

7. Shall select and purchase textbooks on approval of committee. He shall select textbooks, supplies and apparatus subject to the approval of the superintending school committee or school directors and shall make all purchases of the same under such regulations as the superintending school committee or school directors shall adopt.<sup>92</sup>

School committees are charged with the following duties in regard to textbooks.

§ 473. Duties

Superintending school committees and school directors shall perform the following duties:

2. General course of instruction; textbooks. Direct the general course of instruction and approve a uniform system of textbooks, and perform such other functions as may be specified by law. No textbook thus approved shall be changed for 3 years unless by vote of the committee or directors.<sup>93</sup>

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<sup>91</sup>Ibid., Section 126.

<sup>92</sup>Maine, Revised Statutes Annotated (1964), Title 20, Section 161.

<sup>93</sup>Ibid., Section 473.

### Maryland

The State of Maryland places the responsibility of textbook selection with local school districts. Specific guidelines are to be followed in the selection process. Provisions for textbook adoption are as follows.

Selection of textbooks is the responsibility of local boards of education and is defined by the governing statutes of the State of Maryland as follows.

**§ 79. Textbooks, materials of instruction, supplies, etc.**

The Baltimore City Board of School Commissioners and each county board of education shall, upon the recommendation of the superintendent, adopt procedures for the selection and purchase, at the lowest possible price consistent with good quality and subject to the provisions of this article, the necessary textbooks, supplementary readers, materials of instruction, visual and auditory aids, stationery, and school supplies for use in the public schools in the State and they shall be furnished free of cost for use in the public schools of the State. It shall be the duty of the boards of education to furnish such textbooks and supplementary readers, materials of instruction, visual and auditory aids, stationery, and school supplies in ample and sufficient quantities to the several grades in the public schools. (An. Code, 1951, §§ 59, 140; 1939, §§ 51, 127; 1924, §§ 51, 130; 1912, § 68; 1904, § 64; 1888, § 59; 1870, ch. 311; 1872, ch. 377, subch. 10, § 3; 1874, ch. 463; 1896, ch. 135; 1904, ch. 584; 1916, ch. 506, §§ 25-I, 68; 1969, ch. 405, § 1.)<sup>94</sup>

Guidelines for selection are as follows.

All materials should be evaluated in accordance with standards and criteria established and accepted by the Baltimore City Board of School Commissioners and each county board of education and should be consistent with the following guidelines:

1. The process for the selection of textbooks and other instructional materials should involve the formal evaluation by and recommendation of administrators, teachers, subject specialists, and media personnel with input from students, parents, and community representatives.
2. Final authority for the acceptance and utilization of all instructional materials should remain with the Baltimore City Board of School Commissioners and each county board of education.
3. Within each local school system, textbooks should be made available prior to initial purchase for review and examination by any interested person.

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<sup>94</sup>Maryland, Annotated Code of the Public Laws (1957). Article 77, Section 79.

4. The Baltimore City Board of School Commissioners and each county board of education should establish procedures which enable parents to examine media center materials upon request.
5. The process of examining and evaluating materials should be continuous and systematic.
6. A file should be maintained containing evaluative statements of all materials that have been examined and reviewed. For materials not purchased, the reviews may be maintained for a shorter period of time than for the materials purchased.
7. All forms of print and nonprint materials should be included in the selection policy.
8. Specific criteria should be established for each type of material and/or subject area. The same criteria should be applied to gifts, loans, and other materials selected. The following criteria should be considered when evaluating and selecting textbooks; textbook content should:
  - Be accurate and objective
  - Represent the broad spectrum of viewpoints of given topics
  - Be correlated to visual materials
  - Contain bibliographies reflecting multi-media materials
  - Be appropriate to levels of learning
  - Be authoritative, realistic, factual
  - Be arranged chronologically and/or systematically
  - Reflect the pluralistic character and culture of the American people
  - Be free of sexual stereotyping
  - Represent various ethnic groups
9. The selection of instructional materials should reflect the goals of education for the local education agency, the current curriculum trends, methods of instruction, modes of learning, the availability of materials and equipment to meet the various levels of learning, and the individual student needs within a particular school community.
10. There should be an abundance of materials in all formats at many levels of difficulty, with a diversity of appeal and the presentation of different points of view — ethnic, religious, political, and cultural.
11. Reliable, unbiased professional selection aids, lists, and reviewing sources should be used as guides. This system-wide list of selection sources should be made available upon request from the local school community.
12. A procedure should be established for the reconsideration of materials which have been questioned by an individual or group of individuals. The procedure should include the following areas: (1) the Process which clearly defines the steps to be followed; (2) a Reconsideration Form for Textbooks and Instructional Materials; and (3) the Appeal—a formal review of the textbook or instructional material questioned.
13. Appropriate personnel should reconsider the item being questioned according to the adopted procedure. If the complainant is not satisfied, further appeals should be directed to the person responsible as indicated in the procedure.

14. The Baltimore City Board of School Commissioners and each county board of education should serve as the final local authority when textbooks and instructional materials are being reconsidered.<sup>95</sup>

### Massachusetts

Textbook selection in the Commonwealth of Massachusetts is a concern of local school districts. The State has no direct powers in the selection process. Statutory provisions for adopting textbooks are as follows.

The responsibility of providing textbooks lies with local school committees upon the recommendations of the local superintendents of schools.

#### § 48. Textbooks and school supplies

The committee shall, at the expense of the town, purchase textbooks and other school supplies, and, under such regulations as to their care and custody as it may prescribe, shall loan them to the pupils free of charge. If instruction is given in the manual and domestic arts, it may so purchase and loan the necessary tools, implements and materials. It shall also, at like expense, procure such apparatus, reference books and other means of illustration, as may be needed.<sup>96</sup>

#### § 59. Superintendent of schools; appointment; compensation; powers and duties

The school committee of a town not in a superintendency union or district shall employ a superintendent of schools and fix his compensation. A superintendent employed under this section or section sixty or sixty-three shall be the executive officer of the committee, and under its general direction, shall have the care and supervision of the public schools, shall assist it in keeping its records and accounts and in making such reports as are required by law, and shall recommend to the committee teachers, textbooks, and courses of study.<sup>97</sup>

The legal basis for changing textbooks for the public schools is defined by the following governing statute.

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<sup>95</sup>Maryland State Department of Education, Division of Library Development, Guidelines for the Evaluation and Selection of Instructional Materials, Baltimore, Maryland, 1976, pp. 4-5.

<sup>96</sup>Massachusetts, General Laws Annotated, Title XII, Chapter 71, Section 48.

<sup>97</sup>*Ibid.*, Section 59.

## § 50. Change of school books

A change may be made in the school books used in the public schools by a vote of two thirds of the whole school committee at a meeting thereof, notice of such intended change having been given at a previous meeting.<sup>98</sup>

### Michigan

Textbook selection within the State of Michigan involves both the State Board of Education and local school boards. Specific guidelines determine which texts are to be selected. A statutory base for textbook selection is as follows.

Publishers are required to list with the State Board of Education textbook offerings.

#### 380.1431 Approved lists; contracts, terms

Sec. 1431. (1) A board of education or school official shall not purchase, procure by exchange, adopt, or permit to be used in the schools of the district a textbook which is not listed with the state board. A person, firm, or corporation desiring to offer school textbooks for adoption, sale, or exchange in this state shall file with the state board, copies of all textbooks offered, together with a sworn statement of the usual list price, the lowest next wholesale price, and the lowest exchange price at which each book is sold or exchanged for an old textbook on the same subject of like grade and kind but of a different series.

(2) A textbook shall not be listed by the state board unless the person, firm, or corporation offering it enters into an annual written contract, effective as of January 1 and remaining in effect for a period of 1 year from that date, with the state board. The contract shall embrace the following terms and conditions:

(a) The person, firm, or corporation shall furnish all textbooks listed in the statement, and in other statements subsequently filed, during the period of the contract, to each school district or to each intermediate school district in this state at the lowest price contained in the statement. The prices shall be maintained uniformly throughout the state.

(b) The prices listed in the statement shall be automatically reduced in this state when reductions are made elsewhere in the United States, so that a textbook filed and listed shall not be sold or offered for sale by the person, firm, or corporation in this state at higher a net price than is received for the textbook elsewhere in the United States, regardless of whether the textbook is sold or offered for sale elsewhere in accordance with the terms of a contract or otherwise.

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<sup>98</sup>Ibid., Section 50.

(c) Textbooks offered for sale, adoption, use or exchange in this state shall be at least equal in quality to those filed with the state board as regards paper, binding, printing, illustrations, subject matter, and other particulars affecting the value of the textbooks.

(d) If an abridged or special edition of a textbook listed by a person, firm, or corporation is offered for sale elsewhere in the United States at a lower wholesale price than the net wholesale price of the textbook according to the statement filed with the state board, the person, firm, or corporation shall file a copy of the special edition, when requested, together with its price, with the state board, and shall offer the textbook for sale for use in the public schools of this state at the lowest net price at which the textbook is sold or offered for sale elsewhere in the United States.

(e) A person, firm, or corporation shall not enter into an understanding, agreement, or combination to control the prices of school textbooks or to restrict competition in the sale of textbooks for use in the public schools in this state.

(f) If the state board determines that a person, firm, or corporation listing textbooks with the board is offering a textbook for sale elsewhere in the United States at a lower price than that for which the textbook is offered for sale in this state, the board may cancel all filings on the part of the person, firm, or corporation, and may remove from the lists filed all textbooks sold or offered for sale by the person, firm, or corporation.  
P. A. 1976, No. 451, § 1431, Imd. Eff. Jan. 13, 1977.<sup>99</sup>

Governing statutes specifically relate to which materials are to be listed for selection.

### 380.1173 Instructional materials; consideration; selection; biennial random survey

Sec. 1173. (1) The appropriate authorities of a public school of the state shall give special attention and consideration to the degree to which instructional materials that reflect our society, either past or present, including social studies textbooks, reflect the pluralistic, multiracial, and multiethnic nature of our society, past and present. The authorities, consistent with acceptable academic standards and with due consideration for the required ingredients of acceptable instructional materials, shall select instructional materials which accurately and positively portray the varied roles of men and women in our pluralistic society.

(2) The state board shall make a biennial random survey of instructional materials in use in this state to determine the progress made in the attainment of these objectives.

P. A. 1976, No. 451, § 1173, Imd. Eff. Jan. 13, 1977.

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<sup>99</sup>Michigan, Compiled Laws Annotated, Chapter 380, Section 380. 1431.



**380.1174 Curriculum; ethnic, religious and racial minority culture; contributions of women; guidelines**

**Sec. 1174.** (1) The state board may develop guidelines for expanding the existing school curriculum to include materials on the culture of ethnic, religious, and racial minority peoples, and the contributions of women, as defined by the state board.

(2) Guidelines promulgated pursuant to subsection (1) shall be available for grades K to 12 in every public or nonpublic school. The guidelines shall include:

(a) History and heritage of ethnic, religious, and racial minorities and of women and their contributions.

(b) Living conditions, beliefs, and customs of ethnic, religious, and racial minorities and of women and their contributions.

(c) Problems and prejudices encountered by ethnic, religious, racial minorities and by women.

(d) Word meanings and usage as employed by ethnic, religious, racial minorities and by women.

(e) Culturally related attitudes and behavior of ethnic, religious, racial minorities and women.

P. A. 1976, No. 451, § 1174, Imd. Eff. Jan. 13, 1977.<sup>100</sup>

Local boards of education are charged with the responsibility of selecting texts from the approved list.

**380.1422 Selection, approval, purchase, ownership, deposit**

**Sec. 1422.** (1) The board of each school district shall select, approve, and purchase the textbooks to be used by the pupils of the schools on the subjects taught in the district.

(2) The textbooks shall be the property of the school district purchasing them and shall be loaned to pupils without charge. A board may require a reasonable and refundable deposit on textbooks.

P. A. 1976, No. 451, § 1422, Imd. Eff. Jan. 13, 1977.<sup>101</sup>

Individuals involved in textbook adoption are prohibited from receiving financial reward for improper conduct in the textbook selection process.

**388.1006 Same; members, interest in publication of books**

**Sec. 6** A member of the state board of education shall not act as the

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<sup>100</sup>Ibid., Sections 380.1173 through 380.1174.

<sup>101</sup>Ibid., Section 380.1422.

agent of any publisher of school books or school library books or be interested in the publication or sale of any such book as agent or otherwise.<sup>102</sup>

Sec. 1805. (1) A superintendent of public instruction, intermediate superintendent, school officer, superintendent, principal, or teacher of schools shall not act as agent for an author, publisher, or seller of schoolbooks or school apparatus, or receive a gift or reward for his or her influence in recommending the purchase or use of a schoolbook, apparatus, or furniture in this state.

(2) A person who violates this section is guilty of a misdemeanor punishable by a fine of not more than \$500.00 or imprisonment for not more than 3 months, or both.<sup>103</sup>

### Minnesota

Textbook selection in the State of Minnesota is a local concern. A list of texts approved by the Commissioner of Education is sent to each school district. Individual districts are then responsible for selecting texts for the respective schools. Governing statutes which relate to selecting textbooks are as follows.

Publishers are required to file with the Commissioner of Education textbook offerings for adoption.

#### 126.16 Textbooks, license to sell

Before any person, company, or corporation shall offer any school textbook for adoption, sale, or exchange, in the state of Minnesota, the person, company, or corporation shall comply with the following conditions:

(1) File in the office of the commissioner, a sworn statement of the usual list price, the lowest wholesale price, and the lowest exchange price, based on five-year adoption periods, at which such textbook is sold, or exchanged for an old textbook in the same subject of like grade, and kind, but a different series, to any school board, school corporation, or school textbook commissioner anywhere in the United States;

(2) File with the commissioner a written agreement (a) to furnish such textbook or books to any board at the lowest prices so filed, and to maintain such prices uniformly throughout the state; (b) to reduce such prices automatically in Minnesota whenever reductions are made elsewhere in the

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<sup>102</sup>Ibid., Section 338.1006.

<sup>103</sup>Ibid., Section 380.1805.

United States, and guarantee that at no time shall any such textbook be sold in Minnesota at a higher price than is received for such textbook elsewhere in the United States; and (c) that all copies of a textbook offered for sale in Minnesota shall be equal in quality as regards paper, binding, print, illustrations, subject matter, and all points that may affect the value of the textbooks to any sample copy provided a school district;

(3) File with the commissioner a surety bond of not less than \$2,000, and not more than \$10,000, in an amount to be fixed by the commissioner, conditioned upon the faithful performance of all contracts, agreements, and guaranties with the state of Minnesota and any school district within the state of Minnesota made by the person, company, or corporation. The bond shall run to the state of Minnesota and to any school district which may have a cause of action against the person, company, or corporation arising at any time after the bond is filed and before it is cancelled for breach of any contract, agreement, or guaranty made by the person, company, or corporation with the state or any school district. The bond shall be approved by the attorney general.

Upon compliance with the foregoing conditions, the person, company, or corporation shall be licensed to sell school textbooks in the state of Minnesota.<sup>104</sup>

Penalty for noncompliance is provided for as follows.

#### 127.22 Failure to obtain license; penalty

Any person, company, or corporation who shall sell or offer for sale or adoption in the state, school textbooks of any kind without first obtaining a license therefor from the commissioner of education, shall be guilty of a gross misdemeanor; and, upon conviction thereof, shall be fined not less than \$500, and not more than \$2,000.<sup>105</sup>

Local boards of education either in common school districts or independent school districts are charged with the responsibility of adopting textbooks.

#### 123.12 Boards of common school districts

Subd. 7. The board shall superintend and manage the schools of the district; adopt, modify, or repeal rules for their organization, government, and instruction and for the keeping of registers; and prescribe textbooks and courses of study.<sup>106</sup>

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<sup>104</sup>Minnesota, Statutes Annotated, Chapter 126, Section 126.16.

<sup>105</sup>*Ibid.*, Section 127.22.

<sup>106</sup>*Ibid.*, Section 123.12.

### 123.33 Boards of independent school districts

Subd. 7. The board shall superintend and manage the schools of the district; adopt, modify, or repeal rules for their organization, government, and instruction and for the keeping of registers; and prescribe textbooks and courses of study.<sup>107</sup>

### Mississippi

Mississippi operates a State Textbook Purchasing Board which selects textbooks for use in the public schools. Rating committees are also employed to assist in the selection process. General procedures for textbook selection as provided for by state statutes are as follows.

#### § 37-43-3. Mississippi State Textbook Purchasing Board established.

There is hereby established the Mississippi State Textbook Purchasing Board, which shall hereinafter be referred to in this chapter as the board. Said board shall consist of the governor who shall be ex-officio chairman, the state superintendent of public education, and three members to be appointed by the governor, one from each of the three supreme court districts, who shall serve for a period of four years. In case of a vacancy during the term of an appointed member, the governor shall appoint a member to fill only the unexpired term. Each appointed member of the board shall be an educator of known character and acknowledged ability in his or her profession, with at least five years of successful teaching or supervisory experience in the public schools of Mississippi immediately previous to his or her appointment. In addition thereto, each appointed member shall be a qualified elector of his or her supreme court district. He or she shall be at least thirty years old.<sup>108</sup>

Limitations to membership on the Board are defined as follows.

#### § 37-43-13. Certain interests to bar persons from appointment to the board.

No person who has acted as an agent or as an attorney for any author or textbook publishing house, or who has been an author or associate author of any textbook published by any textbook publishing house, or who has been directly or indirectly concerned in the authorship of any textbook, or directly or indirectly connected in any way with any textbook publishing

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<sup>107</sup>Ibid., Section 123.33.

<sup>108</sup>Mississippi, Code 1972 Annotated, Title 37, Chapter 43, Section 37-43-3.

house, shall be eligible to appointment to the board. Any contract entered into in violation of this section shall be void.<sup>109</sup>

Responsibilities of the Purchasing Board are set forth by governing statute.

§ 37-43-19. Powers and duties of the board.

The board shall have the power and is hereby authorized:

(a) To promulgate rules and regulations for the purchase, care, use, disposal, distribution, and accounting for all books to be furnished under the terms of this chapter, and to promulgate such other rules and regulations as may be necessary for the proper administration of this chapter.

(b) To adopt, contract for, and purchase, cash or credit, basal textbooks through twelve grades as provided in the school curriculum, or for any other course that it may add thereto.

(c) To determine the period of contract for rated and adopted textbooks which shall not be for less than four years nor more than five years, with the right of the board in its discretion to renew or extend such contract from year to year for a period not exceeding two additional years, and to determine the conditions of the approval or forfeiture of a contract and such other terms and conditions as may be necessary and not contrary to law. No contract shall be valid and binding until and unless approved by the governor.

(d) To have complete power and authority over additions and amendments to textbooks, advertising for bids and the contents thereof, advertising on the protective covers of textbooks, bids and proposals, prices of textbooks, specimen copies, cash deposits, selection and adoption, distribution, fumigation, emergencies, selling to others, return of deposits, forfeiture of deposits, regulations governing deposits, renovation and repair of books, requisition, transportation or shipment of books, and any other acts or regulations, not contrary to law, that may be deemed necessary for furnishing and loaning free textbooks to the school children, as provided in this chapter.<sup>110</sup>

Rating committees to assist the Board are provided for by the governing statutes.

§ 37-43-21. Textbook rating committees.

For the purpose of assisting the board during an adoption, there shall be rating committees in each of the fields in which textbooks are considered for adoption. Each committee shall be composed of seven members. The state superintendent of public education shall appoint three members of each of the committees, each of whom shall be a competent, experienced

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<sup>109</sup>Ibid., Section 37-43-13.

<sup>110</sup>Ibid., Section 37-43-19.

teacher or supervisor of instruction professionally trained in each of the fields in which textbooks are considered for adoption. The governor of the State of Mississippi thereupon shall appoint four members of each of said committees who shall be persons he deems competent to participate in the appraisal of books offered for adoption, in each field, for use in the public schools of this state.

It shall be the duty of said rating committees to appraise the books offered for adoption in each field in which textbooks are offered for adoption and recommend three books for each adoption to be made by the board and giving the reasons for or basis of such recommendations. No book shall be recommended which does not receive a majority vote of the members of each committee. Any member dissenting from any majority vote of the committee shall make his appraisal of any book recommended or rejected by the majority of the committee and specify the reasons therefor and make such recommendations as he thinks proper. All appraisals, recommendations, and dissents if any, shall be in writing and filed with the board for its consideration upon the adoption. The expenses of such committees shall be paid out of the state textbook fund. Such rating committees shall be subject to the regulations set forth in section 37-43-7, 37-43-9, 37-43-13 to 37-43-17. The board shall have the power to reject any and all recommendations of the rating committees and to call for further recommendations; in no case shall the board adopt any book not recommended by the rating committees.

Any and all textbooks that may be furnished by the publisher thereof to any member of a rating committee without cost shall within one year after receipt of same by said member be turned in to the state school book depository without any cost to the State of Mississippi, and the same shall thereafter be used without any cost to the State of Mississippi in supplying free textbooks to the educable children of the State of Mississippi as now provided by law.<sup>111</sup>

Adoption procedures by local school districts are defined as follows.

§ 37-43-31. Selection of books by local school districts.

The board shall adopt and furnish textbooks only for use in those courses set up in the state course of study adopted by the state board of education, or courses established by special acts of the legislature. In all subjects the board, in its discretion, may adopt five textbooks from those recommended by the textbook rating committees. The board may adopt a plan which permits the local school districts to choose the book or books to be requisitioned from those adopted, provided:

(a) That, in selecting readers, the local school district may be allowed to adopt two from which each pupil enrolled may be furnished the equivalent of two in such proportion as desired:

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<sup>111</sup> Ibid., Section 37-43-21.

(b) That, in selecting books for all other subjects, the local school district may be allowed to select any adopted state textbook without being restricted to a single declared adoption when the governing authority of the district declares a policy of multiple adoptions and specifies the subject areas therefor; not more than one of the books from the multiple adoption list shall be furnished to each pupil enrolled in a course;

(c) That, when a book is furnished by the state, it shall remain in use during the period of its adoption;

(d) That school officials of separate school districts and of each sytem of county schools shall select the same book or books for all of its schools;

(e) That the average per pupil cost of textbook so furnished any unit shall not exceed that allowed for all other units in the state; and

(f) That nothing herein provided shall be construed as giving any school the authority to discard or replace usable copies of textbooks now being furnished by the state.

Whenever any book under contract is displaced by a new adoption, the board may continue to require the schools to use such books until the stock owned by the state is exhausted; however, the period of use shall not exceed four years.<sup>112</sup>

#### Missouri

The State of Missouri's textbook selection process involves local districts selecting texts from a list of publishers approved by the State Board of Education. Specific requirements are provided for by the following statutory laws.

Textbook publishers are required, before offering texts to local school boards, to file with the State Board of Education.

#### 170.061. Publisher to file copy of book and price statement with state board—other required agreements

Before the publisher of any school textbook offers the same for sale to any school board in the state of Missouri, he shall file a copy of the textbook in the office of the state board of education with a sworn statement of the list price and the lowest net price at which the book is sold anywhere in the United States under like conditions of distribution. The publisher shall file with the state board of education a written agreement to furnish the books or books to any school board in Missouri at the price so filed. The

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<sup>112</sup>Ibid., Section 37-43-31.

publisher must further agree to reduce the prices in Missouri if reductions are made elsewhere in the country, so that at no time may any book be sold in Missouri at a higher price than is received for the same book elsewhere in the country where like methods of distribution prevail. The publisher shall further agree that all books offered for sale in Missouri shall be equal in quality to those deposited in the office of the state board of education as to paper, binding, print, illustration and all points that may affect the value of the books. (L. 1963, p. 293, § 10-6)<sup>113</sup>

The State Board of Education is required to publish a list of those publishers who have filed.

**170.091. State board to furnish list of publishers**

The state board of education shall furnish annually each school district with a list of publishers who have conformed to the law relating to sample books, prices and bond.<sup>114</sup>

Textbook selection is then a responsibility of the local boards of education.

**170.051. Textbook defined—School board to provide free textbooks in public schools—funds to be used**

1. As used in this section, the term "textbook" means workbooks, manuals, or other books, whether bound or in looseleaf form, intended for use as a principal source of study material for a given class or group of students, a copy of which is expected to be available for the individual use of each pupil in such class or group.

2. Each public school board shall purchase and loan free all textbooks for all children who are enrolled in grades kindergarten through twelve in the public schools of the district.

3. Only textbooks which are filed with the state board of education pursuant to section 170.061 shall be purchased and loaned under this section. No textbooks shall be purchased or loaned under this section to be used in any form of religious instruction or worship.

4. Each school board shall purchase from the free textbook fund, or from the incidental fund of the district if the free textbook fund is insufficient, all the textbooks for all the pupils in all grades of the public schools of the district. The board may also expend either textbook fund moneys or incidental fund moneys to provide supplementary texts, library and reference books, contractual educational television services, and instructional supplies for all the pupils of the public schools of the district. All books purchased

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<sup>113</sup>Missouri, Annotated Statutes (Vernon's), Title XI, Chapter 170, Section 170.061.

<sup>114</sup>*Ibid.*, Section 170.091.



from district funds are the property of the district but shall be furnished, under rules and regulations prescribed by the school board, to the pupils without charge, except for abuse or willful destruction.<sup>115</sup>

Limitations are placed upon school board members in regard to textbook selection.

**170.171. Board member accepting bribe—penalty**

Any member of any school board who accepts or receives any money, gift, or any property, or favor whatsoever, from any person, firm or corporation selling or offering for sale any textbooks, or any agent thereof, or from any person in any way interested in the sale of textbooks, shall, upon conviction, be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both fine and imprisonment.<sup>116</sup>

Specific reference is made to the teaching about the United States Constitution, the Missouri Constitution, and American history.

**170.011. Courses in the constitutions of the United States and of Missouri, and in American history and institutions required—penalty**

Regular courses of instruction in the constitution of the United States and of the State of Missouri and in American history and institutions shall be given in all public and private schools in the state of Missouri, except privately operated trade schools, and shall begin not later than the seventh grade and continue in high school, college and university courses to an extent determined by the state commissioner of education.<sup>117</sup>

### Montana

Montana's procedure for textbook selection places primary responsibility with local school districts. Textbook dealers are licensed by the State Superintendent of Public Instruction. Statutes that govern the textbook selection process are as follows.

Selection of textbooks is under the auspices of the trustees of school districts and district superintendents or school principals.

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<sup>115</sup>Ibid., Section 170.051.

<sup>116</sup>Ibid., Section 170.171.

<sup>117</sup>Ibid., Section 170.011.

75-7602. Free textbook provisions. The trustees of each district shall provide free textbooks to the public school pupils of the district. The trustees shall purchase such textbooks at the expense of the district and loan them to such pupils free of charge, subject to the textbook damage policy of the trustees. For the purpose of this section only, "textbooks" shall not include those books or manuals which are rendered unusable as a result of having pages designed to be written upon or removed during the course of the study they serve. When the parent of a pupil attending a school of the district so requests, such textbooks shall be sold to them at cost.

75-7603. Textbook selection and adoption. Textbooks shall be selected by the district superintendent or by the school principal, if there is no district superintendent. Such selections shall be subject to the approval of the trustees. In districts not employing a district superintendent or principal, the trustees shall select and adopt the textbooks on the basis of recommendations of the county superintendent.<sup>118</sup>

Individual textbook dealers are required to meet specified conditions in order to sell textbooks.

75-7604. Textbooks obtained from licensed textbook dealer. Textbooks selected and adopted by districts shall be obtained from a licensed textbook dealer.

75-7605. Licensing textbook dealers. Textbook dealers shall be licensed to sell textbooks by the superintendent of public instruction. To obtain a license a textbook dealer shall first file with the superintendent of public instruction his written agreement:

(1) to guarantee that textbooks shall be supplied to any district at the listed, uniform sales prices in effect for schools; except, that such prices may be reduced in accordance with this section;

(2) to guarantee that, at no time, shall any textbook sale price in Montana be a larger amount than the sale price to schools anywhere else in the United States under similar conditions of transportation and marketing; and

(3) to reduce automatically the listed, uniform sales price to schools whenever reductions of these prices are made anywhere in the United States.

Textbook dealers filing the written agreement with the superintendent of public instruction shall also file a surety bond with the secretary of state. The surety bond shall run to the state of Montana and be conditioned on the faithful performance of all duties imposed upon textbook dealers for the purpose of regulating the supply of textbooks to districts. The

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<sup>118</sup>Montana, Revised Codes (1947), Title 75, Chapter 76, Sections 75-7602 through 75-7605.

amount of the surety bond shall be set by the superintendent of public instruction and shall be not less than two thousand dollars (\$2,000) but not more than ten thousand dollars (\$10,000). The bond shall be approved by the attorney general. It shall be the responsibility of the textbook dealer to maintain the surety bond on a current basis.

When the textbook dealer has complied with the written agreement and surety bond requirements for licensing, the superintendent of public instruction shall issue a license to the textbook dealer.<sup>119</sup>

### Nebraska

In the State of Nebraska, adoption of textbooks is within the authority of local school districts. The State is devoid of control in the selection process. Specific provisions for the adoption of textbooks are as follows.

The selection of texts and all other instructional materials is left to the discretion of each school in Nebraska,<sup>120</sup> with school boards and boards of education responsible for their purchase.

79-4.118. School books, equipment, and supplies: purchase: loan. School boards and boards of education of all classes shall purchase all textbooks, equipment, and supplies necessary for the schools of such district.<sup>121</sup>

### Nevada

Textbook selection in Nevada is a State function. Local school districts are not involved in the adoption process. Statutory provisions for selecting texts are as follows.

Selection of texts is the responsibility of a State Board of Education upon recommendations of the State Textbook Commission, as prescribed by the following statutes.

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<sup>119</sup>Ibid., Sections 75-7604 through 75-7605.

<sup>120</sup>Personal correspondence from Royal Henline, Administrator, Curriculum Services, Department of Education, State of Nebraska, Lincoln, Nebraska, 7 March 1978.

<sup>121</sup>Nebraska, Revised Statutes (1943), Reissue of 1976, Chapter 79, Article 4(k), Section 79-4.118.

**390.010 State textbook commission: Creation, number, appointment of members.**

1. The state textbook commission, consisting of the superintendent of public instruction or his designee and eight members appointed by the governor, is hereby created within the state department of education.

2. The governor shall appoint:

- (a) Four members from Clark County;
- (b) Two members from Washoe County; and
- (c) Two members from the remainder of the state.<sup>122</sup>

**390.070 Rules of procedure.** The commission shall adopt rules of procedure concerning all aspects of internal organization and textbook selection not inconsistent with the provisions of this chapter. The rules of procedure shall be in writing and shall be approved by the state board of education before becoming effective.<sup>123</sup>

**390.140 Recommendations of textbooks by commission; selection by state board of education.**

1. The commission shall select textbooks to be recommended for adoption to the state board of education.

2. The state board of education shall make the final selection of all textbooks to be used in the public schools of this state.<sup>124</sup>

Local school districts are required to use state-adopted texts.

**390.220 Trustees to enforce use of adopted textbooks.** Boards of trustees of school districts in this state shall enforce in schools the use of textbooks prescribed and adopted by the state board of education.

**390.230 Use of adopted textbooks; penalties.**

1. The textbooks adopted by the state board of education shall be used in the public schools in the state and no other books shall be used as basic textbooks.

2. This section shall not be interpreted in such a manner as to prohibit:

- (a) The continued use of such textbooks previously approved until they become unserviceable.
- (b) The use of supplemental textbooks purchased by a school district with the approval of the superintendent of public instruction.
- (c) After approval by the commission, the temporary use of textbooks for tryout purposes.

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<sup>122</sup>Nevada, Revised Statutes, Title 34, Chapter 390, Section 390.010.

<sup>123</sup>Ibid., Section 390.070.

<sup>124</sup>Ibid., Section 390.140.

3. Any school officer or teacher who shall violate the provisions of this chapter or not follow the rules and regulations of the commission shall be punished by a fine of not more than \$100.

4. All superintendents, principals, teachers and school officials are charged with the execution of this section.<sup>125</sup>

### New Hampshire

In New Hampshire, local impetus for textbook selection prevails. There is no state-wide process for adopting textbooks. Statutory provision for textbook selection is as follows.

Local boards of education prescribe which textbooks are to be used in the respective school districts.

189:16 Text Books; Supplies. They shall purchase, at the expense of the city or town in which the district is situated, textbooks and other supplies required for use in the public schools; and shall loan the same to the pupils of such schools free of charge, subject to such regulations for their care and custody as the board may prescribe; and shall sell such books at cost to pupils of the school wishing to purchase them for their own use.<sup>126</sup>

### New Jersey

New Jersey's selection process is a local concern. Authority for textbook selection is provided for by the following governing statutes.

The selection of textbooks in the State of New Jersey is at the discretion of local boards of education.

18A:34-1. Textbooks; selection; furnished free with supplies, appropriations

Textbooks shall be selected by the recorded roll call majority vote of the full membership of the board of education of the district and they and other school supplies shall be furnished free of cost for use by all pupils

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<sup>125</sup>Ibid., Sections 390.220 through 390.230.

<sup>126</sup>New Hampshire, Revised Statutes Annotated (1964), Title XV, Chapter 189, Section 189:16.

in the public schools and money therefor shall be appropriated and raised annually in each school district in the same manner as other school moneys are appropriated and raised in the district.<sup>127</sup>

### New Mexico

The textbook selection process in the State of New Mexico employs a State Instructional Material Division to assist the State Board of Education. Selection of texts is governed by specific guidelines. Statutes relating to the selection of texts are as follows.

Selection of texts is within the auspices of the State Board of Education.

77-2-2. State boards—Duties.—Without limiting those powers granted to the state board pursuant to section 77-2-1 NMSA 1953, the state board shall perform the following duties:

D. purchase and loan instructional material to students pursuant to the Instructional Material Law [77-13-1 to 77-13-14];

E. designate courses of instruction to be taught in all public schools in the state;

J. prescribe courses of instruction, requirements for graduation and standards for all schools subject to its jurisdiction.<sup>128</sup>

Within the Department of Education is a State Instructional Material Division.

77-13-3. Division—Director—Surety bond.—A. The state instructional material division is created within the department of education.

B. With approval of the state board, the state superintendent shall appoint a director of the division to be known as the state instructional material director.

C. Before assuming the duties of office, the director shall obtain an official bond payable to the state and conditioned upon the faithful performance of duties during the director's term of office. The bond shall be executed by a corporate surety company authorized to do business in this state. The amount of the bond shall be fixed by the state board. The state board may elect to obtain a schedule or blanket corporate surety bond covering the director and employees of the division for any period not exceeding four [4] years. The cost of a bond obtained pursuant to this

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<sup>127</sup>New Jersey, Statutes Annotated, Title 18A, Chapter 34, Section 18A:34-1.

<sup>128</sup>New Mexico, Statutes (1953), Chapter 73, Article 13, Section 77-2-2.

section shall be paid from the administrative fund of the department of education. Any bond obtained shall be approved by the state board and filed with the secretary of state.

77-13-4. Division—Duties.—Subject to the policies of the state board, the division shall:

A. administer the provisions of the Instructional Material Law [77-13-1 to 77-13-14];

B. adopt and enforce regulations for the handling, safekeeping and distribution of instructional material and for inventory and accounting procedures to be followed by school districts, state institutions, private schools and adult basic education centers pursuant to the Instructional Material Law; and

C. withdraw or withhold the privilege of participating in the free use of instructional material in case of any violation of or noncompliance with the provisions of the Instructional Material Law or any regulations adopted pursuant thereto.<sup>129</sup>

77-13-8. Multiple list—Selection.—A. The state board shall adopt a multiple list to be made available to students pursuant to the Instructional Material Law [77-13-1 to 77-13-14].

B. Pursuant to the provisions of the Instructional Material Law, each school district, state institution, private school or adult basic education center as agent may select instructional material for the use of its students from the multiple list adopted by the state board.<sup>130</sup>

Criteria for the selection of textbooks is based upon recommendations from the New Mexico Department of Education.

Specialists in the various subject areas may develop detailed evaluation instruments to serve as guides in determining the quality of materials presented for adoption. A general evaluation form must be completed by the committee for each item submitted which will cover the following:

- subject area,
- title of book, series, or program,
- publisher,
- copyright date, and whether new or revised,
- level of intended use,
- brief description,
- physical characteristics,
- objectives,
- scope and sequence,

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<sup>129</sup>Ibid., Sections 77-13-3 through 77-13-4.

<sup>130</sup>Ibid., Section 77-13-8.

instructional strategies,  
 content,  
 biases,  
 rating,  
 comments,  
 recommendation to approve or disapprove, and  
 rationale for recommendation.<sup>131</sup>

### New York

Textbook selection in the State of New York is under the auspices of local school districts with guidelines established by the State. Statutory provisions for the adoption of textbooks are defined as follows.

Responsibility for the selection of texts in the State of New York is a function of local boards of education.

§ 701. Power to designate text-books; purchase and loan of text-books;  
 purchase of supplies

1. In the several cities and school districts of the state, boards of education, trustees or such body or officers as perform the functions of such boards, shall designate text-books to be used in the schools under their charge.

2. A text-book, for the purposes of this section, shall mean a book which a pupil is required to use as a text for a semester or more in a particular class in the school he legally attends.

3. In the several cities and school districts of the state, boards of education, trustees or such body or officers as perform the functions of such boards shall have the power and duty to purchase and to loan upon individual request, to all children residing in such district who are enrolled in grades seven to twelve of a public or private school which complies with the compulsory education law, text-books. Text-books loaned to children enrolled in grades seven to twelve of said private schools shall be text-books which are designated for use in any public, elementary or secondary schools of the state or are approved by any boards of education, trustees or other school authorities. Such text-books are to be loaned free to such children subject to such rules and regulations as are or may be prescribed by the board of regents and such boards of education, trustees or other school authorities.

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<sup>131</sup>New Mexico State Department of Education, The Instructional Material Program in New Mexico, Sante Fe, New Mexico, October 1977, p. 8.



4. No school district shall, during the school year nineteen hundred sixty-six—sixty-seven, the school year nineteen hundred sixty-seven—sixty-eight or the school year nineteen hundred sixty-eight—sixty-nine be required to purchase or otherwise acquire text-books, pursuant to this section, the cost of which shall exceed an amount equal to fifteen dollars multiplied by the number of children residing in such district who on the first day of October of such school year are enrolled in grades seven through twelve of a public or private school which complies with the compulsory education law, or in any subsequent school year be required to purchase or otherwise acquire text-books, the cost of which shall exceed an amount equal to ten dollars multiplied by the number of children residing in such district and so enrolled on the first day of October of such subsequent school year; and no school district shall be required to loan text-books in excess of the text-books owned or acquired by such district; provided, however that all text-books owned or acquired by such district shall be loaned to children residing in the district and so enrolled in grades seven through twelve in public and private schools on an equitable basis.

5. In the several cities and school districts of the state, boards of education, trustees or other school authorities may purchase supplies and either rent, sell or loan the same to the pupils attending the public schools in such cities and school districts upon such terms and under such rules and regulations as may be prescribed by such boards of education, trustees or other school authorities.

6. The commissioner of education, in addition to the annual apportionment of public monies pursuant to article seventy-three of this chapter, shall apportion to each school district an amount equal to the cost of the text-books purchased and loaned by the district pursuant to this section, but in no case shall the aid apportioned to the district be in excess of the following amounts:

a. on account of expenditures made during the school year nineteen hundred sixty-six—sixty-seven, the school year nineteen hundred sixty-seven—sixty-eight or the school year nineteen hundred sixty-eight—sixty-nine an average of fifteen dollars per pupil residing in the district and enrolled in grades seven through twelve, and

b. on account of expenditures made in any subsequent school year an average of ten dollars per pupil residing in the district and enrolled in grades seven through twelve.

7. The apportionment provided for in this section shall be paid, at such times as may be determined by the commission and approved by the director of the budget, during the school year in which the expenditures are made to the extent that such expenditures have been made and reported to the department prior to such apportionment. Expenditures by a school district in excess of the average of fifteen dollars per pupil in the school year nineteen hundred sixty-six—sixty-seven, the school year nineteen hundred sixty-seven—sixty-eight or the school year nineteen hundred sixty-eight—sixty-nine or in excess of ten dollars per pupil in any subsequent school year shall be deemed approved operating expense of the district for the

purpose of computation of state aid pursuant to subdivision five of section thirty-six hundred two of the chapter, but expenditures up to such average of fifteen dollars or ten dollars above mentioned shall not be deemed approved operating expenses for such purpose.

L. 1947, c. 820; amended L. 1950, c. 239, § 1, L. 1965, c. 320, § 2; L. 1966, c. 795, eff. Sept. 1, 1966.<sup>132</sup>

Conditions for the change of textbooks within the five-year period are as follows.

#### § 702. Requisites for change

When a text-book shall have been designated for use in a school district or city as provided in subdivision one of section seven hundred one, it shall not be lawful to supersede such text-book by any other book within a period of five years from the time of such designation, except upon a three-fourths vote of the board of education, trustees of such body or officer as performs the function of such board.

L. 1947, c. 820; amended L. 1950, c. 239, § 2, eff. March 29, 1950.<sup>133</sup>

Restrictions as to which texts are to be used are specifically defined.

#### § 704. Text-books containing seditious or disloyal matter

No text-book in any subject used in the public schools in this state shall contain any matter or statements of any kind which are seditious in character, disloyal to the United States or favorable to the cause of any foreign country with which the United States may be at war. The commission, consisting of the commissioner of education and of two persons to be designated by the regents, whose duty it shall be on complaint to examine text-books used in the public schools of the state, in the subjects of civics, economics, English, history, language and literature, for the purpose of determining whether such text-books contain any matter or statements of any kind which are seditious in character, disloyal to the United States or favorable to the cause of any foreign country with which the United States may be at war, is hereby continued. Any person may present a written complaint to such commission that a text-book in any of the aforesaid subjects for use in the public schools of this state or offered for sale for use in the public schools of this state contains matter or statements in violation of this section, specifying such matter or statements in detail. If the commission determines that the text-book against which complaint is made contains any such matter or statements, it shall issue a certificate disapproving the use of such text-book in the public schools of this state, together with a statement of the reasons for its disapproval, specifying the matter found unlawful. Such certificate of disapproval of a text-book, with a

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<sup>132</sup>New York, Consolidated Laws, Annotated (McKinney). Title I, Article 15, Section 701.

<sup>133</sup>*Ibid.*, Section 702.

detailed statement of the reasons for its disapproval, shall be duly forwarded to the boards of education or other boards or authorities having jurisdiction of the public schools of the school districts of this state, and after the receipt of such certificate the use of a text-book so disapproved shall be discontinued in such school district.

Any contract hereafter made by any such board of education or other school authorities for the purchase of a text-book in any of such subjects, which has been so disapproved, shall be void. Any school officer or teacher who permits a text-book in any of such subjects, which has been so disapproved, to be used in the public schools of the state, shall be guilty of a misdemeanor.

L. 1947, c. 820; amended L. 1953, c. 878, § 1, eff. April 20, 1953.<sup>134</sup>

### North Carolina

North Carolina employs a State Textbook Commission to assist the State Board of Education in selecting textbooks. Statutes which relate to textbook selection are as follows.

Selection of texts is a function of the State Board of Education upon the recommendation of the State Textbook Commission.

§ 115-206.1. Textbook needs are determined by course of study.—When the State Board of Education has adopted, upon the recommendation of the State Superintendent of Public Instruction, a standard course of study at each instructional level in the elementary school and the secondary school, setting forth what subjects shall be taught at each level, it shall proceed to select and adopt textbooks. Textbooks adopted in accordance with the provisions of this Article shall be used by the public schools of the State. (1955, c. 1372, art. 24, s. 1; 1959, c. 693, s. 1; 1969, c. 519, s. 1.)

§ 115.206.2. State Board of Education to select and adopt textbooks.—The Board shall select and adopt for a period determined to be most advantageous to the State public school system for the exclusive use in the public schools of North Carolina the basic textbooks or series of books needed for instructional purposes at each instructional level on all subject matter required by law to be taught in elementary and secondary schools of North Carolina. (1955, c. 1372, art. 24, s. 2; 1959, c. 693, s. 2; 1965, c. 584, s. 18; 1969, c. 519, s. 1.)

§ 115-206.3. Appointment of Textbook Commission.—Shortly after assuming office, the Governor, upon recommendation of the State Superintendent, shall appoint a Textbook Commission of 12 members who shall

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<sup>134</sup>Ibid., Section 704.

hold office for four years, or until their successors are elected and qualified. The Governor shall fill all vacancies by appointment for the unexpired term. Six of the members shall be teachers or principals in the elementary grades; five shall be teachers or principals in the high school grades; and one shall be a superintendent of a county or city school administrative unit. The Commission shall elect a chairman, subject to the approval of the State Superintendent. The members shall be entitled to compensation for each day spent on the work of the Commission as approved by the Board and to reimbursement for travel and subsistence expense incurred in the performance of their duties at rates specified in G. S. 138-5(b). (1955, c. 1372, art. 24, s. 3; 1969, c. 519, s. 1.)

§ 115. 206.4. Commission to evaluate books offered for adoption.—The members of the Commission who are teachers or principals in the elementary grades shall evaluate all textbooks offered for adoption in the elementary grades. The members who are teachers or principals in the high schools shall evaluate all books offered for adoption in the high school grades.

Each member shall examine carefully and file a written evaluation of each book offered for adoption in the category for which he is responsible.

The evaluation report shall give special consideration to the suitability of the book to the instructional level for which it is offered, the content or subject matter, and other criteria prescribed by the Board.

Each evaluation report shall be signed by the member making the report and filed with the Board not later than a day fixed by the Board when the call for adoption is made. (1955, c. 1372, art. 24, s. 4; 1969, c. 519, s. 1.)

§ 115-206.5. Selection of textbooks by Board.—At the next meeting of the Board after the reports have been filed, the Textbook Commission and the Board shall jointly examine the reports. From the books evaluated the Board shall select those that it thinks will meet the teaching requirements of the State public schools in the instructional levels for which they are offered. The Board shall then request sealed bids from the publishers on the selected books.

The Board shall make all necessary rules and regulations concerning requests for bids, notification to publishers of calls for adoption, execution and delivery of contracts, requirement of performance bonds, cancellation causes, and such other material matters as may affect the validity of the contracts. (1955, c. 1372, art. 24, s. 5; 1969, c. 519, s. 1.)<sup>135</sup>

§ 115-206.8. Procedure for change of textbook.—The Superintendent may at any time communicate to the Board that a particular book is unsatisfactory for the schools, whereupon the Board may call for a new selection and adoption. If the Board votes to change a textbook, it shall give

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<sup>135</sup>North Carolina, General Statutes, Chapter 115, Article 25A, Sections 115-206.1 through 115-206.5.

the publisher 90 days' notice prior to May 1, after which it may adopt a new book or books on the subject for which a book is sought. (1955, c. 1372, art. 24, s. 7; 1969, c. 519, s. 1.)<sup>136</sup>

§ 115-206.10. Publishers to register.—Any publisher who submits books for adoption shall register in the office of the State Superintendent of Public Instruction the names of all agents or other employees authorized to represent that company in the State, and this registration list shall be open to the public for inspection. (1955, c. 1372, art. 24, s. 9; 1969, c. 519, s. 1.)<sup>137</sup>

§ 115-206.12. Powers and duties of the State Board of Education in regard to textbooks.—The children of the public elementary and secondary schools of the State shall be provided with free basic textbooks within the appropriation of the General Assembly for that purpose. The State Board of Education is directed to request sufficient appropriations from the General Assembly to implement this directive.

The State Board of Education shall administer a fund and establish rules and regulations necessary to:

- (1) Acquire by contract such basic textbooks as are or may be on the adopted list of the State of North Carolina which the Board finds necessary to meet the needs of the State's public school system and to carry out the provisions of this Article.
- (2) Provide a system of distribution of these textbooks and distribute the books that are provided without using any depository or warehouse facilities other than that operated by the State Board of Education.
- (3) Provide for the free use, with proper care and return, of elementary and secondary basic textbooks. The title of said books shall be vested in the State. (1955, c. 1372, art. 25, s. 1; 1965, c. 584, s. 19; 1969, c. 519, s. 1.)<sup>138</sup>

Responsibilities of local boards of education in the textbook selection process are provided for by statutory law.

§ 115-206.14. Local boards of education to provide for local operation of the textbook program and the selection and procurement of other instructional materials.—(a) Local boards of education shall adopt rules and regulations not inconsistent with the policies of the State Board of Education concerning the local operation of the textbook program.

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<sup>136</sup>Ibid., Section 115-206.8

<sup>137</sup>Ibid., Section 115-206.10.

<sup>138</sup>Ibid., Section 115-206.12.

(b) Local boards of education shall adopt written policies concerning the procedures to be followed in its school administrative unit for the selection and procurement of supplementary textbooks, library books, periodicals, and other instructional materials needed for instructional purposes in the public schools of that unit. Supplementary books and other instructional materials shall neither displace nor be used to the exclusion of basic textbooks.

(c) Funds allocated by the State Board of Education or appropriated in the current expense or capital outlay budgets of the school administrative units, may be used for the above-stated purposes. (1969, c. 519, s. 1.)

§ 115-206.15. Legal custodians of books furnished by State.—Local boards of education are the custodians of all books furnished by the State. They shall provide adequate and safe storage facilities for the proper care of these books and emphasize to all students the necessity for proper care of textbooks. (1955, c. 1372, art. 25, s. 3; 1969, c. 519, s. 1.)

§ 115-206.16. Rental fees for textbooks prohibited; damage fees authorized.—No local board of education may charge any pupil a rental fee for the use of textbooks. Damage fees may be charged for abuse or loss of textbooks under rules and regulations promulgated by the State Board of Education. All money collected on state-owned books as damage fees or from the sale of books under the provisions of this Article shall be paid quarterly as collected to the State Board of Education. (1969, c. 519, s. 1.)

§ 115-206.17. Duties and authority of superintendents of local administrative units.—The superintendent of each administrative unit, as an official agent of the State Board of Education, shall administer the provisions of this Article and the rules and regulations of the Board insofar as they apply to his unit. The superintendent of each administrative unit shall have authority to require the cooperation of principals and teachers so that the children may receive the best possible service, and so that all the books and moneys may be accounted for properly. If any principal or teacher fails to comply with the provisions of this section, his superintendent shall withhold his salary vouchers until the duties imposed by this section have been performed.

If any superintendent fails to comply with the provisions of this section, the State Superintendent, as secretary to the State Board of Education, shall notify the State Board of Education and the State Treasurer. The State Board and the State Superintendent shall withhold the superintendent's salary vouchers, and the State Treasurer shall make no payment until the State Superintendent notifies him that the provisions of this section have been complied with. (1955, c. 1372, art. 25, s. 8; 1969, c. 519, s. 1.)<sup>139</sup>

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<sup>139</sup>Ibid., Sections 115-206.14 through 115-206.17.

North Dakota

Textbook selection in the State of North Dakota is a local concern. Local school districts select texts from a list of textbooks approved by the State Superintendent of Public Instruction. Statutes which govern the textbook selection process in North Dakota are as follows.

Textbook selection is the responsibility of local school districts.<sup>140</sup> A list of textbooks are approved by the State Superintendent of Public Instruction from which local districts may select.

15-43-01. Textbooks—Statement and bond required as a condition to sale.—Before any person, firm, or corporation shall offer for selection, adoption, contract, sale, or exchange any school textbook or book for use in the schools of this state, such person, firm, or corporation shall:

1. File a copy of the book in the office of the superintendent of public instruction with a sworn statement setting for the published list price and the lowest wholesale price at which the book is sold to any school board, school corporation, or school commission anywhere in the United States, and the lowest price at which the book is exchanged for an old book in the same subject of like grade and kind but of a different series, based upon three and five-year contract periods;
2. File with the superintendent of public instruction a bond running to the state of North Dakota, with a surety company authorized to do business in this state as surety thereon, in a penal sum of not less than two thousand dollars nor more than ten thousand dollars, the sum to be determined by the superintendent, conditioned as follows:
  - a. That any book listed in the statement, and in any other statement subsequently filed by the person, firm, or corporation, shall be supplied by the publisher to any school district in the state of North Dakota at the price and terms contained in the statement;
  - b. That the price and terms filed are to be reduced automatically in North Dakota whenever reductions are made by the publisher elsewhere in the United States so that at no time shall any book so filed and listed be sold to district school boards, or to their authorized purchasing agents, at a higher price than is received for the book by the publisher elsewhere in the United States;

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<sup>140</sup>Personal correspondence from H. J. Snortland, Superintendent, Department of Public Instruction, Bismarck, North Dakota, 3 April 1978.

- c. That all textbooks offered for sale, adoption, contract, or exchange by the publisher in the state of North Dakota shall be equal in quality to those deposited in the office of the superintendent of public instruction as to paper, binding, printing, illustrations, subject matter, and all particulars that may affect the value of the textbooks;
- d. That in case an abridged or special edition of any book shall be prepared, the person, firm, or corporation manufacturing the same shall sell the special edition to district school boards in this state, or to their authorized purchasing agents, at the same wholesale price as that for which the book is sold elsewhere.<sup>141</sup>

15-43-04. Lists of textbooks to be furnished to school districts.—The superintendent of public instruction shall distribute to the clerks of district school boards and the county superintendents of schools, a complete printed list of books filed with his department, giving the prices and terms of sale and, annually, shall cause a supplementary list of textbooks filed during the year, with prices and terms of sale, to be printed and distributed. All books used in the public schools of the state shall be selected, adopted, and purchased by contract from such list by the district school boards. School boards may use supplementary books not shown on the lists described in this section.<sup>142</sup>

Limitations on the selection and purchase of textbooks is provided for by law.

15-43-05. Inducements to purchase textbooks prohibited—Sample copies.—No person, firm, or corporation shall obtain or attempt to obtain within this state the adoption, selection, or purchase of, or contract for, any school textbook by making any reward or promise of a reward to any teacher or school officer. No person, firm, or corporation shall offer or give emoluments, money, or any valuable thing, promise of employment, or any other inducement, to any teacher or school officer in any school district for any vote or promise of vote, or for his influence, for the selection of any schoolbook for use in this state. This section shall not prohibit any person, firm, or corporation from giving, or any school officer or teacher from receiving, a reasonable number of sample schoolbooks for examination. Any school officer or teacher who receives sample books for examination shall deliver the samples to the clerk of the school district after such examination, and the books then shall become the property of the district.<sup>143</sup>

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<sup>141</sup>North Dakota, Century Code Annotated, Title 15, Chapter 15-43, Section 15-43-01.

<sup>142</sup>*Ibid.*, Section 15-43-04.

<sup>143</sup>*Ibid.*, Section 15-43-05.



Textbooks are to be adopted for a period of five years.

15-43-11. Changing of textbooks.—No public school or educational institution of the state shall change or alter the basic textbooks which are used in the school or institution more often than once in five years. This section shall not apply to technical books used in institutions of higher learning or junior colleges.<sup>144</sup>

### Ohio

Ohio's system of textbook selection is a local concern. Individual school districts adopt and purchase textbooks for the respective schools. Laws governing the textbook selection process are as follows.

Publishers are required to register a list with the Superintendent of Public Instruction from which textbooks are to be selected by local boards of education.

#### 3329.01 Filing and preservation of copies of books and price list before adoption

Any publisher of schoolbooks in the United States desiring to offer schoolbooks for use by pupils in the public schools of Ohio, before such books may be adopted and purchased by any school board, must on or before the first day of January of each year, file in the office of the superintendent of public instruction, the published list wholesale price thereof. When any such publisher desires to offer for use a schoolbook after the first day of January, a supplement to the January list must be filed in the office of the superintendent of public instruction, showing the published list wholesale price thereof. No revised edition of any such book shall be used in public schools until the published list wholesale price thereof has been filed in the office of the superintendent.<sup>145</sup>

#### 3329.08 Selection of textbooks by board; adoption for full term of four years

At a regular meeting, held between the first Monday in February and the first Monday in August, the board of education of each local school district, from lists adopted by the county board of education and the board of education of city and exempted village school districts, shall determine by a majority vote of all members elected which of such textbooks so filed

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<sup>144</sup>Ibid., Section 15-43-11.

<sup>145</sup>Ohio, Revised Code Annotated (Page), Title 33, Section 3329, Subsection 3329.01.

shall be used in schools under its control. No textbooks shall be changed, nor any part thereof altered or revised, nor any other textbook substituted therefor, within four years after the date of selection and adoption thereof, as shown by the official records of such boards except by the consent, at a regular meeting, of four fifths of all members elected thereto. Books so substituted shall be adopted for the full term of four years.<sup>146</sup>

### Oklahoma

Textbook selection in the State of Oklahoma is a function of the State Textbook Committee. Local districts are required to choose textbooks from a state-adopted list. Governing statutes concerning the textbook selection process are as follows.

The selection of textbooks to be used in the public schools is provided for in the State Constitution.

§ 6. Textbook system for common schools—Official multiple textbook lists.—The Legislature shall provide for a system of textbooks for the common schools of the State, and the State through appropriate legislation shall furnish such textbooks free of cost for use by all pupils therein. The Legislature shall authorize the Governor to appoint a committee composed of active educators of the State, whose duty it shall be to prepare official multiple textbook lists from which textbooks for use in such schools shall be selected by committees composed of active educators in the local school districts in a manner to be designated by the Legislature. As amended State Question No. 318, Initiative Petition No. 228. Adopted general election Nov. 5, 1946.<sup>147</sup>

A State Textbook Committee with the following duties is established by governing statutes.

#### § 16-101. State Textbook Committee—Members—Qualifications

There is hereby created the State Textbook Committee, which shall be composed of two (2) members from each Congressional District appointed by the Governor. The regular terms of all members shall be for four (4) years. Provided, that all members of the State Textbook Committee currently appointed and serving shall serve as members of the State Textbook

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<sup>146</sup>Ibid., Subsection 3329.08.

<sup>147</sup>Oklahoma, Constitution, art. XIII, sec. 6.

Committee created by this section, for the terms for which they were appointed. No member shall be eligible to succeed himself. At no time shall more than one (1) member of the State Textbook Committee be an employee of the same school district. Each member shall have had not less than five (5) years' teaching or supervisory experience in the public schools of Oklahoma at the time of his appointment, and shall be actively employed in the public schools of Oklahoma during the term of his service on said committee. The State Superintendent of Public Instruction or a designated member of his staff shall serve as secretary of said committee and vote only when there is a tie vote in the membership of the committee. Each member shall receive, as compensation for his services, the sum of Twenty-five Dollars (\$25.00) per day, and necessary traveling expenses while in the performance of his duties.

Within one week after the first day of July of each year, said committee shall meet at the call of the State Superintendent of Public Instruction at the State Capitol and elect by secret written ballot a chairman and vice-chairman from its membership to serve for the year. The terms for which new members are appointed shall be staggered by the Governor in making his appointments to the end that the terms of three (3) members shall expire each year.

#### § 16-102. Meetings—Selection of textbooks

This Committee shall meet at the call of the chairman as often as necessary to discharge its responsibilities. Not later than the first day of December of each year the State Textbook Committee shall meet at the call of the chairman at the State Capitol and select textbooks for subjects taught in the public schools of the state up to and including the twelfth grade, which selections shall be for not more than four (4) years. Said committee shall select seven (7) textbooks or series of books for each subject, but if there are not seven (7) books satisfactory to the committee, then it may select only such books as are in its judgment satisfactory for each subject.<sup>148</sup>

A list of approved texts is then submitted to each administrative unit within the State.

#### § 16-110. List of textbooks

As soon as any contract shall have been entered into for the furnishing of textbooks for use in the public schools of the state, the secretary of the State Textbook Committee shall send a list of the textbooks selected by the State Textbook Committee to every county superintendent of schools, district superintendent of schools and local textbook committee in the state, which list shall show the respective prices of such textbooks and

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<sup>148</sup>Oklahoma, Statutes Annotated, Title 70, Chapter 1, Article 16, Sections 16-101 through 16-102.

contain such other information as the secretary shall deem advisable, and he shall annually publish and distribute a list of all textbooks that have been selected and that are then in force.<sup>149</sup>

Textbooks for use in the public schools are then chosen by local textbook committees.

**§ 16-111. Local textbook committee—Examination copies—Adoptions—Requisitions**

A. The superintendent of schools of each independent school district shall appoint a local textbook committee consisting of not less than three (3) nor more than nine (9) teachers employed in the public schools of the district, of which a majority thereof shall be classroom teachers, and one (1) lay member, and the superintendent of schools or a principal designated by him shall serve as chairman of such local textbook committee.

B. The county superintendent of schools of each county shall likewise appoint a local textbook committee to serve all dependent school districts in his county. Such local textbook committee shall consist of not less than three (3) nor more than nine (9) teachers employed in the dependent school districts of the county, of which a majority thereof shall be classroom teachers, and one (1) lay member, and the county superintendent of schools shall serve as chairman of such local textbook committee.

C. The publisher of a textbook selected by the State Textbook Committee shall deposit with the publisher's Oklahoma depository sufficient copies of each approved textbook so that each local textbook committee may examine any or all new adoptions. Upon receiving a written request therefor from a local textbook committee, the State Board of Education shall instruct the proper depository to furnish to the local textbook committee a reasonable number of examination copies of each textbook selected by the State Textbook Committee, in the subjects taught or to be taught in schools under their jurisdiction. The cost of each advanced copy shall be charged against the value of textbooks allowed any school district retaining or using the same; provided, that any such advance copy in new condition may be returned to the control of the publisher's Oklahoma depository, within five (5) months after receipt thereof, if there is no longer a need therefor, for credit of the value previously charged against said district. The publisher may, at his discretion, upon the written request of any duly appointed local textbook committee, furnish to such local textbook committee examination copies of such textbook, the teacher edition of such textbook, if one is published, and any teaching aids used with such textbook, free of charge.

D. On or before a date to be fixed by the State Board of Education, each local textbook committee shall adopt textbooks from the multiple list selected by the State Textbook Committee in such manner as shall be

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<sup>149</sup>Ibid., Section 16-110.

prescribed by the State Board of Education. Each local textbook committee shall serve without compensation and shall cease to exist when local adoptions have been completed and shall be replaced by another local textbook committee appointed in the same manner as herein provided.

E. On or before a date to be fixed by the State Board of Education, the superintendent of schools of each independent school district and the county superintendent of schools of each county shall submit to the State Board of Education a requisition for all of the textbooks adopted by the local textbook committee that will be needed for the ensuing year in the school or schools for which such adoptions were made, and immediately upon receipt of such requisitions it shall be the duty of the State Board of Education to make requisitions on the proper depository or depositories for such textbooks. Provided, that the State Board of Education may, for good cause, permit supplemental requisitions to be submitted, and may fill such requisitions after the date specified. Any local adopting unit may requisition any textbooks placed on the official multiple textbook list, if such requisition does not exceed the allocation for each school district as provided herein.<sup>150</sup>

Selection of junior high school textbooks is provided for as follows.

#### § 16-112. Junior high schools—Selection of textbooks

In selecting textbooks to be used for a school in which grades seven(7) to nine (9), inclusive, or any combination thereof, are taught, and which has been designated as a junior high school by the local board of education, the local textbook committee may select either textbooks adopted for use in junior high school grades or textbooks for use in elementary school grades.

The State Board of Education may authorize local textbook committees to adopt more than one textbook for any subject offered in the public schools of Oklahoma; provided such authorization shall not exceed the textbook allocations for each school district as provided herein.<sup>151</sup>

### Oregon

In Oregon, textbook selection is a concern of a State Textbook Commission with criteria for adoption established by the State Board of Education. Local school districts adopt texts from an approved multiple list. Statutory provisions for textbook selection are defined as follows.

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<sup>150</sup>Ibid., Section 16-111.

<sup>151</sup>Ibid., Section 16-112.

The governing statutes of the State of Oregon establish a State Textbook Commission.

**337.011 State Textbook Commission; qualifications; terms; vacancies.**

(1) The State Board of Education shall appoint a State Textbook Commission consisting of seven persons of recognized scholarship and professional standing.

(2) The membership shall consist of:

(a) Three classroom teachers, two of whom are public elementary or secondary school teachers, and one of whom teaches in a community college or university;

(b) Three public school administrators or supervisors; and

(c) One public member.

(3) Commissioners shall be selected from various parts of the state, and must have been residents of the state for a period of three years immediately preceding appointment.

(4) The term of each commissioner is four years. No commissioner shall be eligible to serve more than two full terms consecutively. The state board shall fill all vacancies on the commission.<sup>152</sup>

The State Board of Education establishes specific criteria and guidelines for textbook selection.

**337.035 State board to establish guidelines and criteria for review and selection of textbooks.** The State Board of Education by rule shall establish guidelines and criteria for the review and selection of textbooks to be used in the public elementary and secondary schools in this state.<sup>153</sup>

The duties of the State Superintendent of Public Instruction, under the direction of the State Board of Education in regard to textbook selection, are defined as follows.

**337.030 Annual circular to school book publishers.** In each even-numbered year, the Superintendent of Public Instruction shall, under the direction of the State Board of Education, mail a copy of a circular to all the leading school textbook publishers in the United States. The circular shall contain:

(1) The name and post-office address of each member of the State Textbook Commission.

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<sup>152</sup>Oregon, Revised Statutes, Title 30, Chapter 337, Section 337.011.

<sup>153</sup>*Ibid.*, Section 337.035.

(2) The time and place of meeting of the commission to review and select textbooks.

(3) The general form of the proposal to be followed by publishers in submitting textbooks for review and selection.

(4) The general form of contract to be entered into between the State Board of Education and a publisher whose textbooks may be selected.

(5) The branches of study for which textbooks are to be selected.

(6) The statutory provisions relating to the review and selection of textbooks.

(7) Such additional information as may be considered useful.<sup>154</sup>

The function of the State Textbook Commission is defined by governing statutes.

337.050 Review and selection of books and instructional materials.

(1) The State Textbook Commission shall review and select, for a six-year period, a multiple choice list of textbooks for each grade and subject field in the standard curriculum for which, in its judgment, textbooks are required. The commission shall refrain from selecting any textbook in a subject field, whenever it finds that no textbook can be documented as meeting, to the degree determined by the State Board of Education, the guidelines and criteria established by the State Board of Education for textbooks. The commission may also review and select other instructional material which it considers appropriate for grade and subject fields.

(2) Subsequent to any November biennial selection, the commissioners may approve the request of a publisher to substitute a more recent edition of any officially adopted textbook or item of instructional material in lieu of the edition or item selected by the commission. The commission shall meet to consider alternate selections for any textbook selection which is rejected by the State Board of Education.<sup>155</sup>

337.075 Selection or rejection of proposals. (1) The State Textbook Commission may select or reject any textbook contained in any proposal. If the terms and conditions for furnishing a textbook in all proposals relating to that textbook are considered by the commission to be unreasonable or the textbook is considered to be unsuitable pursuant to guidelines and criteria established by the State Board of Education, the commission may reject the textbook.

(2) At the same or subsequent sessions, the commission may receive new proposals for a textbook previously rejected and select the textbook in the same manner as other textbooks are required to be selected. No proposal shall be considered unless the publisher has delivered without charge one

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<sup>154</sup>Ibid., Section 337.030.

<sup>155</sup>Ibid., Section 337.050.

copy of each textbook contained in the proposal to each commissioner at least 60 days before the meeting.<sup>156</sup>

Selection or rejection of textbooks are functions of the State Board of Education.

337.055 State board to ratify or reject textbook selections. After the State Textbook Commission submits its list of selected textbooks, the State Board of Education shall review the selection list and may ratify or reject any textbook selected. The state board shall reject any textbook that the state board finds does not meet, to the degree determined by the State Board of Education, the guidelines and criteria for review and selection established under ORS 337.035. If a textbook is rejected, the state board shall notify the commission within five days of the meeting at which the board rejected the textbook.<sup>157</sup>

Upon adoption of texts, the State Textbook Commission is charged with the following duties.

337.080 Report of textbook selections. The State Textbook Commission shall immediately report the textbooks which have been selected to the State Board of Education. The report shall contain such information as may be required by the state board. The report shall be signed by the chairman of the commission and attested by the secretary.<sup>158</sup>

337.100 Circular of approved textbooks. Prior to February 1 of every odd-numbered year, the Superintendent of Public Instruction shall, under the direction of the State Board of Education, issue a circular giving the full title of each book selected by the State Textbook Commission when the selection was ratified by the state board, with such other information as the state board may consider useful.

337.110 Selection of substitute or additional textbooks. If at any time during the period for which a textbook is on the approved list, it becomes necessary for the State Textbook Commission to select any textbook instead of or in addition to those regularly selected, the chairman of the commission or the Superintendent of Public Instruction may call a special session of the commission. It may, upon convening, select such textbook in the same manner as other textbooks are required to be selected; except the Superintendent of Public Instruction need not in such case cause circulars described in ORS 337.030 to be sent to publishers.<sup>159</sup>

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<sup>156</sup>Ibid., Section 337.075.

<sup>157</sup>Ibid. Section 337.055.

<sup>158</sup>Ibid., Section 337.080.

<sup>159</sup>Ibid., Sections 337.100 through 337.110.



The function of local boards of education in regard to textbook selection is defined as follows.

**337.120 School board selection, purchase and use of approved textbooks and instructional materials.** (1) Except as otherwise provided by ORS 337.141, the district school board, with the assistance of teachers and administrators of the district, shall select textbooks and other instructional materials for each grade and subject field from the multiple choice approved list. The district school board may involve citizens in the process.

(2) The board shall cause at least one-half of the books or materials, according to titles, so selected to be used in its schools at the beginning of the next school year following the selection and the remainder thereof at the beginning of the second school year following the selection, except when authorized by the Superintendent of Public Instruction to postpone such use for a reasonable period of time.<sup>160</sup>

**337.141 Textbook adoption by school boards.** (1) With the approval of the State Board of Education, the district school board of any school district having a population of fewer than 20,000 average daily membership may adopt and use textbooks in place of or in addition to those adopted by the State Board of Education provided they meet the guidelines and criteria established by the State Board of Education.

(2) The district school board of any school district having a population of 20,000 or more average daily membership may adopt and use textbooks in place of or in addition to those adopted by the State Board of Education provided they meet the guidelines and criteria established by the State Board of Education. Nothing in this section prohibits employees of a district described in this subsection from serving on the State Textbook Commission or otherwise participating in textbook selection.<sup>161</sup>

The following governing statute gives specific reference concerning textbooks on American history and government.

**337.260 Textbooks on American history and government.** Every board, commission, committee or officer responsible for the selection of textbooks for use in the public schools shall select textbooks on American history and government which adequately stress the services rendered by those who achieved our national independence, who established our form of constitutional government and who preserved our federal union. No textbook shall be used in the schools which speaks slightly of the founders of the republic or of those who preserved the union or which belittles or undervalues

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<sup>160</sup>Ibid., Section 337.120.

<sup>161</sup>Ibid., Section 337.141.

their work. Respect for all people regardless of race, color, creed, national origin, age, sex, or handicap, and their contributions to our history and system of government shall be reflected in the textbooks adopted by the State Board of Education.<sup>162</sup>

### Pennsylvania

In Pennsylvania, textbook selection is a local responsibility. Local boards of education are required to provide instructional materials for their respective school districts. Statutory provisions are as follows.

Authority to select and purchase textbooks lies with boards of school directors.

#### § 8-801. Purchases; use in schools; rules and regulations

The board of school directors of each school district shall purchase all necessary furniture, equipment, textbooks, school supplies, and other appliances for the use of the public schools, or any department thereof, in their respective districts, and furnish the same free of cost for use in the schools of the district, subject to such rules and regulations regarding the use and safe-keeping thereof as the board of school directors may adopt. All furniture, equipment, books, school supplies, and other appliances purchased by the board of school directors of any school district, for the use of the public schools therein, shall be purchased in the manner provided in this act. 1949, March 10, P. L. 30, art. VIII, § 801.<sup>163</sup>

#### § 8-803. Time and manner of adopting and furnishing textbooks and supplementary books

All school textbooks, in school districts of the second, third, and fourth class, shall be adopted by the board of school directors at any regular meeting between the first day of April and the first day of August following. Such books, so adopted, shall be provided for the use of the schools at the beginning of the school terms next following. If in said school districts there shall be a district superintendent or supervising principal, such district superintendent or supervising principal shall report in which subjects new textbooks are needed, and after consultation with the teachers under his supervision, what textbooks should be adopted or changed. No adoption or change of textbooks shall be made without his recommendation, except by a two-thirds vote of the board. Books, supplementary to textbooks regularly adopted, may be adopted and purchased for use in the schools at

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<sup>162</sup>Ibid., Section 337.260.

<sup>163</sup>Pennsylvania, Statutes Annotated (Purdon), Title 24, Article VIII, Section 8-801.

any time. Such supplementary books shall be adopted in the same manner as textbooks are herein required to be adopted. 1949, March 10, P. L. 30, art.VIII, § 803.<sup>164</sup>

### Rhode Island

Textbook selection in the State of Rhode Island falls within the auspices of the Commissioner of Education. Statutory provisions in the adoption procedure are as follows.

The Commissioner of Education is charged with the responsibility of recommending textbooks for adoption.

16-1-8. Visits of Commissioner to schools.—The commissioner of education shall visit, as often as practicable, every town in the state, for the purpose of inspecting the schools, and diffusing as widely as possible, by public addresses and personal communications with school officers, teachers and parents, a knowledge of the defects, and of any desirable improvements, in the administration of the system and the government and instruction of the schools.

16-1-9. Uniformity of textbooks—Library assistance.—He shall recommend and bring about, as far as practicable, a uniformity of textbooks in the schools of all the towns; and shall assist in the establishment of, and selection of books for, school libraries. He shall publish annually a list of recommended textbooks; provided, however, that he shall not recommend any textbook of a sectarian nature or containing sectarian material or which for any reason would not be proper for use in the public schools.<sup>165</sup>

A change in adopted texts is provided for by the following statute.

16-23-1. Changes in school books.—A change may be made in the school books in the public schools of any town by a vote of two-thirds (2/3) of the whole school committee; and in the city of Providence by a vote of a majority of all the members elected to the school committee, notice of the proposed change having been given in writing at a previous regular meeting of said committee; provided, that no change be made in any textbook in the public schools of any town oftener than once in three (3) years, unless by the consent of the department of education.<sup>166</sup>

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<sup>164</sup>Ibid., Section 8-803.

<sup>165</sup>Rhode Island, General Laws (1956), Title 16, Chapter 1, Sections 16-1-8 through 16-1-9.

<sup>166</sup>Ibid., Chapter 23, Section 16-23-1.

Providing texts is the responsibility of local school committees.

16-23-2. Loan of textbooks.—The school committee of every community as the same is defined in § 16-7-16 shall furnish upon request at the expense of such community, textbooks in the fields of mathematics, science and modern foreign languages appearing on the published list of textbooks recommended by the commissioner of education as provided in § 16-1-9 of the general laws, as herein amended, to all pupils of elementary and secondary school grades resident in such community, said textbooks to be loaned to such pupils free of charge, subject to such rules and regulations as to care and custody as the school committee may prescribe.

Every such school committee shall also furnish at the expense of such community all other textbooks and school supplies used in the public schools of said community, said other textbooks and supplies to be loaned to the pupils of said public schools free of charge, subject to such rules and regulations as to care and custody as the school committee may prescribe. School books removed from school use may be distributed to pupils, and any textbook may become the property of a pupil who has completed the use of it in school, subject to rules and regulations prescribed by the school committee.<sup>167</sup>

### South Carolina

Textbook selection in the State of South Carolina is a function of the state. Under the direction of the State Board of Education, a State Textbook and Curriculum Advisory Committee recommends textbooks to the Board. Provisions for textbook selection are as follows.

The South Carolina State Board of Education is granted the power to select texts to be used in the public schools and to appoint committees to aid in the textbook selection process.

§ 59-5-60. General powers of Board.

The State Board of Education shall have the power to:

(7) Prescribe and enforce the use of textbooks and other instructional materials for the various subjects taught or used in conjunction within the free public schools of the State, both high schools and elementary schools in accordance with the courses of study as prepared and promulgated by the Board.

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<sup>167</sup>Ibid., Section 16-23-2.

(8) Appoint such committees and such members of committees as may be required or as may be desirable to carry out the orderly function of the Board.<sup>168</sup>

§ 59-31-40. Adoption of new books.

The meetings of the State Board of Education in any year at which an adoption is made shall be public. New textbooks adopted by the State Board of Education in any year shall not be used in the free public schools of this State until the next school session begins.<sup>169</sup>

Specific references to a uniform series of textbooks, exceptions, and using books not approved by the State Board of Education are as follows.

§ 59-31-30. Use of uniform series of textbooks in State-aided schools; exceptions.

The State Board of Education shall designate a uniform series of textbooks which shall be used in every free public school of this State receiving any State aid for any purpose whatsoever. No school failing or refusing to use such uniform series of textbooks, unless expressly permitted by law to do so, shall receive any State school aid for any purpose whatsoever. But the provisions of this section shall not apply to any school district that provides free schoolbooks to the value of twenty thousand dollars or more to the school children of such district. The State Board of Education is hereby charged with the enforcement of this section.<sup>170</sup>

§ 59-31-50. Use of disapproved books unlawful.

In all schools and colleges within this State which are supported in whole or in part from the free school funds it shall be unlawful to use any textbook which has been condemned or disapproved by the State Board of Education.<sup>171</sup>

Under the auspices of the State Board of Education, a State Textbook and Curriculum Advisory Committee and an Evaluating and Rating Committee are responsible for making recommendations to the Board in the textbook selection process.

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<sup>168</sup>South Carolina, Code of Laws (1976), Title 59, Chapter 5, Section 59-5-60.

<sup>169</sup>*Ibid.*, Chapter 31, Section 59-31-40.

<sup>170</sup>*Ibid.*, Section 59-31-30..

<sup>171</sup>*Ibid.*, Section 59-31-50.

To Establish The Method For Adopting Textbooks For The Free Public Schools Of South Carolina; To Create The Textbook Advisory Committee; To Provide For The Appointment Of Special Committees To Evaluate And Rate Textbooks; And To Promulgate Such Rules And Regulations As Are Necessary To Carry Out The Provisions Thereof.

**SECTION 2.** The State Board of Education shall appoint, with recommendation of the State Superintendent of Education, a Textbook and Curriculum Advisory Committee. The Committee shall consist of 14 members; 8 members who are actively engaged in school work either administratively or supervisory, at least one from each congressional district; 1 lay citizen preferably a former member of the State Board of Education; 5 members from the staffs of the state educational agencies having responsibilities in the curriculum and textbook fields including the Director of the Office of General Education, the Director of the Office of Textbooks and a representative ETV. Four of the appointed members shall be appointed for a term of two years, five shall be appointed for a term of four years. Thereafter the term of all appointed members shall be four years. The Committee shall have the power to organize itself.

The duties of the Advisory Committee shall be to study continually the curriculum and textbook needs and make recommendations to the State Board of Education in subject fields in which textbook adoptions are needed to meet new programs of study; to replace textbooks on which contracts are expiring; to make recommendations in regard to exercising options in existing contracts; to make recommendations in regard to renegotiating expiring contracts. The Committee shall give careful attention to new and improved methods of presenting instructional materials. The Committee is authorized and directed to secure the assistance and advice of any consultants deemed proper. Special consideration should be given to consultants from the State Department of Education, colleges and universities of South Carolina.

**SECTION 3.** The State Board of Education shall examine the recommendation of the Textbook and Curriculum Advisory Committee and in its discretion determine the fields in which textbook adoptions will be made, if any. The State Board of Education shall, through its Administrative Officer, make information relative to the adoptions available to publishers and school administrators by mail, not later than June 30 preceding the adoption date. It shall also make due arrangements for an official announcement at least 45 days before bids are to be opened. This announcement shall be sent to all publishing companies registered with the Administrative Officer of the Board, and a notice shall be given by legal advertisement in at least one daily newspaper in the State of South Carolina in accordance with the general legal requirements.

The formal notice by the Administrative Office of the Board shall make available sample copies of the bid forms to be used by the publishers in submitting textbooks for adoption and a copy of the contract and bond each publisher will be required to execute if its books are adopted.

**SECTION 4.** The State Board of Education shall appoint, with recommendation of the State Superintendent of Education, as soon as practical, an Evaluating and Rating Committee for each major subject field or related subject area in which adoptions are to be made. It is the desire of the Board that a balance be maintained on each evaluating committee between large and small, rural and urban schools. There shall be at least two nominees, one principal and one alternate, for each position except that of the State Department of Education.

It shall be the duty of each Evaluating and Rating Committee to rate all textbooks offered for adoption and file a written report with the Administrative Officer of the State Board of Education. The report shall consist of the committee's evaluation, list of textbooks which the committees recommend as suitable for adoption, and an annotation which includes for each textbook or series of textbooks the common reading level of text materials, level of difficulty, and other information as required by the State Superintendent. In order to be placed on the recommended list, a textbook must receive affirmative votes from at least two-thirds of the committee members.

If a committee does not find the specified number of books satisfactory, it shall so indicate in its report. If, in the judgment of the committee for some unusual reason, the number is considered inadequate, the reasons shall be carefully detailed in its report.

To facilitate efficient and competent evaluations by the committee, the State Board of Education shall furnish the committee with detailed instructions pertaining to its duties, textbook evaluating guide materials, etc., and the time schedule necessary in order for the State Board of Education to complete its work in an orderly fashion. It shall be the duty of the State Superintendent of Education to serve as co-ordinator and liaison between the State Board of Education and the committees.

Publishers shall be required to furnish a brief to each committee member for all textbooks being offered for adoption. Failure to comply with this regulation will automatically exclude textbooks for adoption. The brief shall include a common reading level of the text material, level of difficulty and other information as required by the State Superintendent of Education. The Committee shall hold hearings allowing adequate time for each publisher's oral presentation provided, however, that there shall be at least 21 days between the final date for submitting briefs and the dates of hearings.

The Director of the Office of General Education and the Chairmen of the Evaluating and Rating Committees shall develop a schedule of official hearings according to the Calendar of Events adopted by the State Board of Education.

Each publishing company or its representative is responsible for distributing textbook samples and briefs containing common reading level, level of difficulty and other required information as outlined in Section 4 of the State Board Regulations to each member of the appropriate Textbook Evaluating and Rating Committee on or before the date set by the State

Board of Education for each adoption year. This may be done by personal delivery or by mail to the address specified by the committee member. At the time of delivery, when made in person, the textbook representative may have a maximum of thirty minutes of personal interview with the committee member. If books and briefs have been delivered by mail, the representative may have the same allotment of time.

There shall be no further contact between the interview above and the official hearings before the committees except by invitation extended to the textbook representative by the committee member.

Each committee member must keep a record of invitations to textbook representatives to be submitted to the chairman of the committee.

Interviews during the period of time allotted to official hearings shall be restricted to official hearings before the committees.

Committees may, if in their judgment it is deemed necessary, request additional information and appearances after the original hearing. This shall be done by the chairman when requested to do so by the committee.

The committee is authorized and directed to secure the assistance and advice of any consultants deemed proper. Special consideration should be given to consultants from the State Department of Education, colleges and universities of South Carolina. It is further authorized to request and secure necessary clerical services from the State Department of Education.

Textbooks shall not be recommended by the Evaluating and Rating Committee and the State Board of Education shall not adopt textbooks that fail to meet the South Carolina Official Manufacturing Standards and Specifications. Provided, however, the State Board of Education reserves the right to waive minor deviations and technicalities and in each case the publisher shall be responsible for showing cause why the minor deviations or technicalities cannot be met. Copies of the Official Manufacturing Standards and Specifications will be made available to the publishers with the official call for bids.

In the event an Evaluating and Rating Committee cannot submit a report that is acceptable to the State Board of Education, the said committee may be dissolved and a new committee appointed in the same manner as the original committee.

Each Evaluating and Rating Committee shall be dissolved as soon as the State Board of Education completes the adoption in the subject field for which it was appointed.

**SECTION 5.** The Office of Textbooks is hereby directed to cooperate fully with the State Board of Education, the Textbook and Curriculum Advisory Committee and the Textbook Evaluating and Rating Committees in determining whether textbooks offered for adoption meet the South Carolina Manufacturing Standards and Specifications for Textbooks. The Office shall furnish a list of textbooks offered for adoption which, in its judgment, fail to meet the Manufacturing Standards and Specifications and list in detail the deviations it finds prior to the rating by the evaluating committees.



Materials in certain critical areas which may not meet the manufacturing standards and specifications for textbooks may be adopted when recommended by the appropriate Textbook Evaluating and Rating Committee and when the Committee's justification is deemed sufficient by the State Board of Education.

**SECTION 6.** The Evaluating and Rating Committees may recommend and the State Board of Education may adopt textbooks in manuscript. Provided, however, any contract awarded for textbooks in manuscript form shall be subject to final approval of the State Board of Education and the Evaluating and Rating Committees as to the final wording, format, illustrations and captions, and physical construction. Any Evaluating and Rating Committee for subject matter adopted in manuscript form shall not be discharged until final action has been taken by the State Board of Education on the completed text.

**SECTION 7.** It shall be the duty of the State Board of Education to adopt not less than 3 nor more than 5 books or series of books in each subject field if so many books have been recommended by the Evaluating and Rating Committees. However, prior provisions notwithstanding, the State Board of Education is not required to adopt any books recommended by the committees that in the judgment of the State Board of Education are unsatisfactory. The State Board of Education may adopt a number of books or series of books in excess of 5 if so recommended by the Evaluating and Rating Committee and the State Board of Education concurs in the recommendation.

The State Board of Education shall not approve and add a textbook or other instructional materials to the state list of adopted textbooks unless it has been reviewed and rated by a properly constituted rating committee.

**SECTION 9.** All original contracts shall be for a period of four years and contain a clause providing that at the option of the State Board of Education the contracts may be extended for one or two additional years at a renegotiated price.

At the expiration of a contract and option between the state and the publisher of any textbook, the State Board of Education, upon the recommendations of the Textbook and Curriculum Advisory Committee and upon satisfactory agreement being had with such publisher, may continue the contract for any such textbook or latest edition thereof, for an indefinite period which may be terminated either by the State Board of Education or publisher upon 90 days notice. The Board may extend contracts at different prices from those of the original contract.

**SECTION 10.** The Attorney General of the State of South Carolina shall approve all contracts to be entered into between the state and the publishers and shall approve the bond to be filed by each contract publisher. Such bond shall be placed in the custody of the State Treasurer.

**SECTION 12.** Any school, desiring to teach an elective course that has been approved by the State Board of Education where, due to the volume, a formal adoption has not been made, may make application to the State

Department of Education for the approval of the book which the school proposes to use. The State Superintendent of Education, after consultation with his staff, may approve the text if it is found to be satisfactory. If it is not found to be satisfactory, the matter shall be taken up with the school involved, recommendations made and a suitable text shall be agreed upon between the school and the State Department of Education. All texts so approved under this provision shall be reported to the State Board of Education in writing within 90 days with a description of the circumstances which make the action advisable. These texts are subject to State Board approval.

**SECTION 13.** Any school may be given the right to select and use a new and improved textbook not already on the state adopted list and upon the recommendation of the Director of the Office of General Education and with the approval of the State Board of Education.

Under no circumstances shall this section be used as a vehicle to circumvent state textbook adoptions. All textbooks approved under this provision shall be reported to the State Board of Education.

**SECTION 14.** Any bidder or publisher submitting textbooks to the state for adoption shall on or before the day bids are received register in the office of the State Superintendent of Education the names, home addresses of all agents or employees of any kind or persons retained for legal or other services to whom there is being paid or there will be paid any salary, commission or royalty for representing the bidder or publisher. This registered list shall be kept open for inspection by the public and copies of it shall be made available to members of the State Board of Education, the Textbook and Curriculum Advisory Committee and the Textbook Evaluating and Rating Committees. The failure of any bidder or publisher to register the names, home addresses of all agents of any kind as herein specified shall be deemed as sufficient cause for summary rejection of the bid or proposal of such bidder or publisher.

**SECTION 15.** All contracts shall provide that, if any person who furnishes adopted textbooks in the state shall sell the same textbooks or cause them to be sold or offer them for sale to any other person, state or State Board of Education for a price less than that which this state has contracted to pay for such textbooks, such lower prices shall automatically become the price of such textbooks in this state and that the content of the textbook shall be considered and not the title in investigating such prices. The State Board of Education shall make the necessary investigations as to the prices of such textbooks so sold to other persons, schools, states or State Boards of Education.

**SECTION 16.** It shall be unlawful for any teacher of a school supported in whole or in part from the public school funds of this state, any trustee of any such school or any other school officer or employee to become an active or silent agent of any school book publisher or be in anywise pecuniarily interested in the introduction of any school book into any school in this state. Any person violating any of the provisions hereof shall be guilty of a misdemeanor.

It is not the intent of the State Board of Education by this provision to prevent any teacher or administrative officer of the public schools of South Carolina from authoring or co-authoring a textbook or other instructional materials to be used in the public schools of South Carolina.<sup>172</sup>

General criteria for evaluating textbooks is as follows.

#### **I. Philosophy of Authorship**

1. Is there evidence that findings of research and evaluation have gone into the development of the publication?
2. Is the point of view, philosophy, or purpose of the book clearly stated?
3. Does the content reflect the author's stated purpose?
4. If the author departs from a generally accepted theory or belief, does he explain it adequately for the pupil's understanding?
5. If the author states a conclusion or an opinion, is it drawn from facts clearly stated in the text?

#### **II. Organization**

1. Is the text organized to facilitate correlation with other subject areas, and are suggestions made for such correlation?
2. Would the book lend itself to differing programs of courses or study? To a variety of methods and teaching techniques? To adjustment of individual needs?
3. If the book is a part of a series, is there a balance in type of organization and approach?
4. Is there a clearly defined organization providing materials for the development of skills?

#### **III. Content**

1. Is the subject matter up to date and scientifically correct?
2. Are the learning steps arranged in a sequence which considers previous learnings, which provides for individual differences?
3. Does the book include suggestions which will assist the teacher and youth to evaluate progress?
4. Is there a program for vocabulary development?
5. Does the book meet the interest and needs of the age group for which it is intended?
  - a. Can pupils find help in satisfying their curiosity, in extending their interests, in solving problems that are significant to them at this age?
  - b. Is learning well motivated, in terms of satisfaction, success, and growth?
6. Are permanent values and basic concepts set as goals, along with attainment of skill and facts?

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<sup>172</sup>South Carolina State Department of Education, Textbook Adoption Regulations for the Public Schools of South Carolina, Columbia, South Carolina, 1977, pp. 1-14.

7. Does the treatment emphasize desirable social attitudes and ideals of democracy?
8. If the text suggests activities, are they functional, based on research in the field, and significant to youth?
9. Do suggested projects and activities stimulate worthwhile thought and action?

#### IV. Style: Readability

1. Do type, paper, binding, and appearance contribute to its readability?
2. Is the book readable for the age group for which it is designated?
3. Are simplicity and clarity achieved in presentation of both technical and non-technical material?
4. Are vocabulary, sentence structure, and paragraph structure readable and suitable for students?
5. Is the title of the book attractive, pertinent, and clear in terms of the actual content of the book?
6. Are directions for students clear, understandable, and concise?

##### Illustrations

7. Are the illustrations sufficiently abundant, properly labeled, appropriate, accurate, and easily interpreted?
8. Are the illustrations recent?
9. Do the illustrations help in the development of word meanings, concepts, and application of the ideas being developed?
10. Do the illustrations extend and enrich the content of the verbal text?
11. Are there charts, diagrams, and other pictorial materials appropriate to the content of the text and to the age level of the pupils using it?
12. How effectively are charts, maps, graphs, and diagrams used as learning aids?
13. Are sources for additional reading and audio-visual resources suggested?
14. Will Table of Contents, Indexes, and Appendixes facilitate learning?
15. Will other instructional aids such as glossary, footnotes, charts, maps, pictures, and tests aid pupils and teachers in using the book effectively?
16. Are techniques for independence and self-help suggested?

#### V. Accompanying Aids

1. Does the book provide suggestions for the teacher either in the text itself or in the teacher's manual?
2. Are there practical helps for teachers, such as guides, handbooks, or manuals containing keys?
3. Does the text or teacher's manual give suggested procedures for development of daily or weekly plans?
4. Does the manual give helpful classroom hints?

5. Does the manual give sufficient help and data on equipment and instructional materials?<sup>173</sup>

### South Dakota

Each local school district in the State of South Dakota is responsible for the selection of textbooks with the right to review and remove undesirable selections retained by the State Board of Education. Statutory provisions for textbook selection are as follows.

The selection of textbooks to be used is a responsibility of local boards of education.

13-34-16.3. Public school boards to loan books to public or non-public school students, or person not in school—Board approval of books.—To implement § 13-34-16.2, each public school board shall loan without charge to all persons ages five through nineteen who are either enrolled in a public school, or in a school supervised in accord with chapter 13-4, or who are engaged in a course of instruction pursuant to § 13-27-3, within the school district under such board's jurisdiction, or who are residing in such district but are not enrolled in any such school or engaged in any such course of instruction, such nonsectarian textbooks and text-related workbooks designed for individual use as are normally furnished by such school board to individual students enrolled in the public schools of the district under such board's jurisdiction. All such textbooks and text-related workbooks shall be approved by the respective school boards.<sup>174</sup>

The State Board of Education has the statutory right to review and remove, at its discretion, texts that are undesirable.

13-34-11. Review of instructional material by state board—Withdrawal of undesirable material from use.—The state board of education shall have the power and authority to review any books or other instructional material selected for use in the elementary and secondary schools of this state. If in the discretion of the board such books or other instructional material are found or thought to be undesirable in nature, the board may order such material withdrawn from use and circulation in said elementary and secondary schools of this state.<sup>175</sup>

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<sup>173</sup>South Carolina Department of Education, General Criteria for Evaluating Textbooks, Columbia, South Carolina, n.d.

<sup>174</sup>South Dakota, Compiled Laws Annotated, Title 13, Chapter 13, Section 13-34-16.3.

<sup>175</sup>*Ibid.*, Section 13-34-11.

Tennessee

Within the State of Tennessee, a state-wide system of textbook selection is provided for. Local school districts select from an approved list furnished by the State Textbook Commission. Textbook selection is defined by the following governing statutes.

Tennessee employs a textbook commission in the selection process.

**49-2001. State textbook commission.—Qualifications of members.—**There is hereby created a state textbook commission composed of seven (7) members, six (6) of whom shall be appointed by the governor. The members of said state textbook commission shall be educators of high qualifications who are actually engaged in educational work in the state, and whose educational qualifications shall not be less than graduation from a four (4) year college with a bachelor's degree, and with at least five (5) years of teaching, supervisory, or administrative experience.

One (1) member of the state textbook commission shall be a county superintendent of schools; one (1) member shall be a city superintendent of schools; one (1) member shall be a school principal; one (1) member shall be a teacher or supervisor in the lower grades (grades 1 to 3, inclusive); one (1) member shall be a teacher or supervisor in the intermediate grades (grades 4 to 8, inclusive); and one (1) member shall be a teacher or supervisor of upper grade subjects (grades 9 to 12, inclusive.)

At least one (1) member of said textbook commission shall be appointed from East Tennessee, one (1) from Middle Tennessee and one (1) from West Tennessee. [Acts 1951, ch. 180, § 2 (Williams, § 2453.28); modified.]<sup>176</sup>

Limitations of the members of the Commission are defined as follows.

**49-2004. Oath of commission members.—**Before beginning the discharge of their duties it shall be the duty of each member of the said textbook commission to take and subscribe to the following oath: "I do hereby declare that I am not now directly or indirectly financially interested in, or employed by, any textbook publisher or agency, and that I will not become directly or indirectly financially interested in any of the proposed contracts, nor in any book, nor in any publishing concern handling or offering any books or other publications to the commission, of which I am a member, for listing and adoption, and I do hereby promise that I will act honestly, faithfully and conscientiously, and in all respects will discharge my duty as a member of this commission to the best of my skill and ability." [Acts 1951, ch. 180, § 3 (Williams, § 2453.29).]

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<sup>176</sup>Tennessee, Code Annotated (1977 Replacement), Title 49, Chapter 20, Section 49-2001.

49-2005. Gifts to commission members by publishers prohibited.—No member of the said textbook commission, shall receive any gift, reward, present or emolument from any author, publisher or distributor of such book or books except copies of books offered for listing and adoption; nor shall any member or employee of said commission accept any employment as agent, attorney, subagent, employee, or representative of any author, publisher or distributor of such books during his term of service on said commission, nor within twelve (12) months after the expiration of his term of office, nor shall any such author, publisher, or his agent, attorney, employee or representative give any present, reward, gift or emolument to said member of the commission during his term of service whereby such member is to become the agent, employee, attorney, or representative of such author or publisher. [Acts 1951, ch. 180, § 3 (Williams, § 2453.29).]<sup>177</sup>

Duties of the Commission are defined as follows.

49-2008. Listing of approved textbooks.—It shall be the duty of the state textbook commission to prepare a list of approved standard editions of textbooks for use in the public schools of the state. A list of at least four (4) books in each subject and grade shall be listed, if available and of sufficient merit to warrant being listed. Said textbook commission shall select and publish such a list of textbooks for use in the schools of Tennessee not later than February 1 of any year when listings are made or there are changes to be reported. Said list shall contain the title of the textbook listed for adoption, the name of the publishers and the prices at which said books are available, as provided in this chapter. [Acts 1951, ch. 180, § 6 (Williams, § 2453.32); modified; Acts 1973, ch. 377, §§ 1,2.]

49-2009. Policies for adding to or removing books from lists.—The state textbook commission shall have authority to determine the policies and the conditions under which textbooks may be added to the list for adoption, as provided in this chapter, at any regular meeting or at a date designated at a regular meeting. The state textbook commission shall also have the authority to determine the policies and conditions under which any book may be removed from the list for adoption at any regular meeting, or at a date designated at a regular meeting, if the commission finds that such book contains subversive material or information, provided the publisher of such book has been given written notice by the secretary of the commission not less than thirty (30) days prior to the meeting that removal of such book will be considered by the commission. [Acts 1951, ch. 180, § 6 (Williams, § 2453.32).]<sup>178</sup>

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<sup>177</sup>Ibid., Sections 49-2004 through 49-2005.

<sup>178</sup>Ibid., Sections 49-2008 through 49-2009.

Adoption by local units and limitations are as follows.

49-2020. Use of unapproved books prohibited.—No teacher or principal in any of the public schools of this state shall use or permit to be used in his or her school any textbooks upon any subject to the exclusion of the textbooks listed by the state textbook commission, provided that this shall not apply to textbooks previously listed and purchased with public funds. Any teacher or principal violating the provisions of this section shall be punished by a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00). [Acts 1951, ch. 180, § 15 (Williams, § 2453.41).]

49-2021. Adoption by local committees.—The local boards of education are hereby authorized and required to adopt textbooks to be used in the public schools of said school districts, from the list of textbooks listed for adoption by the state textbook commission, said adoption to be for a period of not less than three (3) years, and not more than five (5) years, in accordance with state contracts, provided, that cities or special school districts may adopt the same textbooks that are used in the county in which said city or special school district is located; and provided, further, that all cities or special school districts having a total population of less than five thousand (5,000) are hereby required to make their adoption as a part of and in cooperation with the county unit in which said city or special school district is located; and provided, further, that boards of education shall make their adoption upon recommendations of committees, these committees to be set up by subject matter fields and composed of three (3) or five (5) teachers, or supervisors and teachers, the number depending upon the relative size of the local school system. These committees shall be composed of teachers and supervisors who are now teaching or supervising the respective subject and shall be by grade or groups of grades arranged so that a committee may consider an entire series of books if it should so desire, provided in all cases, the teachers appointed on the committees herein provided for shall hold professional certificates and shall have had three (3) or more years of experience as teachers or supervisors in the public schools. The members of the committee authorized in this paragraph shall serve for one (1) fiscal year; provided, that all members appointed on such committees shall subscribe to the oath as set out in § 49-2004; the oath shall be administered by the county judge or by the chairman of the county court, or by some authorized official empowered to administer an oath. The superintendent of schools in the school district, adopting textbooks under the provisions of this chapter, shall serve as ex officio member of all committees, and shall record a list of all books adopted and immediately at the completion of the adoption forward a copy of such recorded adoption to the state commissioner of education. [Acts 1951, ch. 180, § 7 (Williams, § 2453.33); modified; 1968 (Adj. S.), ch. 419, § 1; 1974 (Adj. S.), ch. 654, §§ 120, 121.]<sup>179</sup>

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<sup>179</sup>Ibid., Sections 49-2020 through 49-2021.



Texas

Texas involves the State Textbook Committee, the State Commissioner of Education, and the State Board of Education in the textbook selection process. Textbook selection is provided for by the following statutory laws.

The State Textbook Committee recommends to the Commissioner of Education a list of textbooks for approval.

**§ 12.11 State Textbook Committee**

(a) The commissioner of education, annually at a meeting of the State Board of Education held on or before the first Monday in May, shall recommend the names of 15 persons, no two of whom shall live in the same congressional district, for appointment to the textbook committee for a one-year term.

(b) Each of the persons so named shall be an experienced and active educator engaged in teaching in the public schools of Texas. At least a majority of the members of the committee shall be classroom teachers, and all members shall be appointed because of unusual backgrounds of training and recognized ability as teachers in the subject fields for which adoptions are to be made during the year of appointment.

(c) No person who has acted as an agent for any author or textbook publishing house or who has been an author or associate author of any textbook published by any publishing house, or who owns stock in any publishing house, or who has been or is directly or indirectly connected with any textbook publishing house, shall be eligible for appointment to the State Textbook Committee.

(d) The State Board of Education shall approve or reject the nominations: and if any name is rejected, the commissioner of education shall nominate others until 15 persons have been selected, no two of whom shall live in the same congressional district, who shall be named by the State Board of Education to membership on the textbook committee.

(e) It shall be the duty of the textbook committee to recommend to the commissioner of education a complete list of textbooks which it approves for adoption at the various grade levels in the various school subjects. The committee shall examine carefully all books submitted for adoption and shall prepare and publish for free distribution a list of its recommendations to the state commissioner.

(f) The textbook committee shall hold its meetings where and when the State Board of Education shall determine; its member shall receive no salary but shall be reimbursed for all expenses incurred in attending meetings and/or appeals involving the committee.

(g) The State Textbook Committee is subject to the Texas Sunset Act; and unless continued in existence as provided by that Act the committee is abolished effective September 1, 1989.<sup>180</sup>

The Commissioner of Education is charged with the duty of submitting to the State Board of Education a list of recommended textbooks from the list submitted by the State Textbook Committee.

#### § 12.12. Recommendations by State Commissioner of Education

(a) The commissioner of education may remove books from the list recommended by the State Textbook Committee, but he shall not place on the list any book not recommended by the committee, nor shall he reduce to a single adoption any list for a specific grade or subject in which multiple adoption is recommended by the committee.

(b) The commissioner of education, pursuant to the provisions in Subsection (a) of this section, shall submit to the State Board of Education the list recommended by the State Textbook Committee.<sup>181</sup>

The duties of the State Board of Education in regard to textbook selection are defined as follows.

#### § 12.13. Adoption by State Board of Education

The State Board of Education may remove books from the list submitted by the commissioner of education, but the board shall not place on the list any book not recommended by the commissioner of education, nor shall the board reduce to a single adoption any list for a specific grade or subject in which multiple adoption is recommended by the commissioner of education.

#### § 12.14. Multiple List for Elementary Grades

(a) As used in this section:

(1) "Textbooks" shall be consistent with the definition in legal use prior to the adoption of this section.

(2) "Learning systems" means a coordinated system of instructional materials, in one or more media, that conveys to the pupil information on a subject comparable to that contained in the approved textbooks.

(3) "Supplementary materials" means instructional materials, in any medium, that are used as an adjunct to a specific adopted textbook.

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<sup>180</sup>Texas, Education Code (Vernon), Section 12, Subsection 12.11.

<sup>181</sup>*Ibid.*, Section 12.12.

(4) "Cost per pupil served" means the cost of a textbook, learning system, or combination of text and supplementary materials, divided by the number of students that it may reasonably be used by and by the number of years it may be expected to be in use. The cost per pupil served for each item of instructional material shall be calculated by the commissioner of education. In calculating this cost, the commissioner may take into consideration the cost figures certified by the publisher and shall consult with the appropriate curriculum departments. No district may utilize a textbook, learning system, or combination of text and supplementary materials at a higher cost per pupil served than that specified by the commissioner.

(b) The State Board of Education shall select and adopt a multiple list of textbooks for use in the elementary grades of the public schools of Texas.

(c) The multiple list shall consist of not less than three nor more than five textbooks on the following subjects: spelling, reading (basal and supplementary), English language and grammar, geography, arithmetic, physiology-hygiene, civil government, driver education and safety, vocal music, elementary science, history of the United States (in which the Confederacy shall be fairly represented), history of Texas, agriculture, a system of writing books, and a system of drawing books.

(d) The board may also select and adopt textbooks for any additional subjects approved by the State Department of Education for teaching in the elementary schools, including but not limited to the foreign languages of German, Bohemian, Spanish, French, Latin, or Greek.

(e) The board may, if deemed necessary, adopt as textbooks a geography of Texas and a civil government of Texas.

(f) The board may select and adopt supplementary materials to be used in conjunction with approved textbooks. To qualify, the cost per pupil served of the material together with the cost per pupil served of its corresponding text must not exceed the cost per pupil served of the most expensive textbook on the textbook multiple list.

(g) The board may select and adopt a multiple list of not less than two nor more than three learning systems in those subject areas it deems appropriate. To qualify for the list, a system must have a cost per pupil served no higher than the cost per pupil served of the most expensive textbook on the textbook multiple list.

(h) No book adopted shall contain anything of a partisan or sectarian character.

## § 12.15. Multiple List for High Schools

(a) As used in this section:

(1) "Textbooks" shall be consistent with the definition in legal use prior to the adoption of this section.

(2) "Learning systems" means a coordinated system of instructional materials, in one or more media, that conveys to the pupil information on a subject comparable to that contained in the approved textbooks.

(3) "Supplementary materials" means instructional materials, in any medium, that are used as an adjunct to a specific adopted textbook.

(4) "Cost per pupil served" means the cost of a textbook, learning system, or combination of text and supplementary materials, divided by the number of students that it may reasonably be used by and by the number of years it may be expected to be in use. The cost per pupil served for each item of instructional material shall be calculated by the commissioner of education. In calculating this cost, the commissioner may take into consideration the cost figures certified by the publisher and shall consult with the appropriate curriculum departments. No district may utilize a textbook, learning system, or combination of text and supplementary materials at a higher cost per pupil served than that specified by the commissioner.

(b) The State Board of Education shall adopt a multiple list of books for use in the high schools of Texas.

(c) The multiple list shall include not fewer than three nor more than five textbooks on the following subjects: algebra, plane geometry, solid geometry, general science, biology, physics, chemistry, a one-year world history, American history, homemaking, physical geography, driver education and safety, vocal music, English composition, literature (including American literature and English literature), shop courses, physiology, agriculture, civil government, commercial arithmetic, bookkeeping, typewriting, shorthand, journalism, and the Latin, Spanish, German, Czech, and French languages.

(d) Free textbooks may also be adopted and provided for any additional courses or subjects approved by the Central Education Agency and accredited by the state accrediting committee.

(e) The board may select and adopt supplementary materials to be used in conjunction with approved textbooks. To qualify, the cost per pupil served of the material together with the cost per pupil served of its corresponding text must not exceed the cost per pupil served of the most expensive textbook on the textbook multiple list.

(f) The board may select and adopt a multiple list of not less than two nor more than three learning systems in those subject areas it deems appropriate. To qualify for the list, a system must have a cost per pupil served no higher than the cost per pupil served of the most expensive textbook on the textbook multiple list.

## § 12.16. Other Provisions

(a) In the event as many as three suitable textbooks are not offered for adoption on any one subject, the board may select fewer than three textbooks.

(b) Specific rules as to the manner of selection for all books on the multiple lists provided for in this section shall be made by the State Board of Education.

(c) Textbooks adopted in accordance with the provisions of this section are adoptions for every public school in this state and no public school in

the state shall use any textbook unless it has previously been approved and adopted by the State Board of Education. The board shall prescribe rules under which such textbooks adopted and approved shall be introduced or used by or in the public schools of the state.

(d) Textbooks on physiology and hygiene shall contain at least one chapter on the effect of alcohol and narcotics.

#### § 12.17. Public Notice of Adoptions to be Made

(a) When textbooks are to be selected and adopted under the provisions of this code, or where a contract for a textbook then in use is about to expire, two months in advance of the meeting of the State Board of Education at which the adoptions may be made, the chairman of the State Board of Education shall give public notice—

(1) by having printed in the public press a notice to the effect that the meeting will be held and that adoptions will be made; and

(2) by sending written notices to all persons, firms, or corporations in whose behalf the notices shall have been requested.

(b) The notices required by Subsection (a) of this section shall contain:

(1) the time and place of the meeting of the State Board of Education at which the adoptions may be made;

(2) the subjects on which textbooks may be adopted;

(3) the last date on which sample copies of books offered for textbook adoption may be submitted;

(4) the amount of cash deposit required;

(5) the time to be allowed for signing contract and filing bond after the award is made; and

(6) a statement that formal proposals will be received on the date of the meeting.<sup>182</sup>

#### § 12.24. Selection and Adoption

(a) The State Board of Education shall make a full and complete investigation of all books and accompanying bids. The textbooks shall be selected and adopted after a careful examination and consideration of all books presented.

(b) The books selected and adopted shall be those which in the opinion of the board are most acceptable for use in the schools. Quality, mechanical construction, paper, print, price, authorship, literary merit, and other relevant matters shall be given such weight in making the decisions as the board may deem advisable.

(c) No textbook shall be adopted until it has been read carefully and examined by at least a majority of the State Textbook Committee.

(d) The State Board of Education shall proceed without delay to adopt for use in the public schools of this state textbooks on all branches authorized by this chapter; but if the bids submitted are not satisfactory, the

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<sup>182</sup>Ibid., Sections 12.13 through 12.17.

board may postpone the selection of the books or a part of them to such time as board may select, and after readvertising, new bids may be received and acted on by the board in the same manner as original bids.

(e) If no texts on any prescribed subject are submitted by any particular publisher or publishers that meet the requirements of the schools, as may be determined by the board, then it shall be the duty of the board to instruct the commissioner of education to investigate the book market for the purpose of securing bids with a view of providing at the most reasonable price or prices possible, the best available texts on subjects that are to be adopted by the board for the schools of Texas.<sup>183</sup>

#### § 12.28. Provisions for Updating Books

(a) Every contract shall contain a provision that the State Board of Education may, during the life of the contract, on giving one year's previous notice to the publishers of the book or books, order the changes, amendments, and additions to the book or books so selected and adopted as in the discretion of the board shall keep them up-to-date and abreast of the times. Such revisions shall not be made more often than at two-year intervals.

(b) If in the judgment of the State Board of Education changes or revisions make it impractical for the revised books to be used in the same class with the old books, the publishers shall be required to give the same exchange terms as were given when the books were first adopted, and the exchange period shall extend two years from the time the revised books are first put into use in the schools.

(c) Nothing in this section shall be construed to give the State Board of Education power or authority to abandon any book or books originally contracted for.<sup>184</sup>

#### § 12.30. Announcement of Adoption

(a) As soon as the State Board of Education has entered into the contract for the furnishing of books for the public schools of this state under the provisions of this chapter, it shall be the duty of the board to issue its proclamations of such facts to the people of the state.

(b) As soon as practical after the adoption of the textbooks provided for in this chapter, the commissioner of education shall address to the county superintendents and to the presidents of the school boards in independent school districts and to the presidents of school boards in common school districts having 300 or more scholastic population a circular letter which shall contain a list of all the books and such other information as he may deem advisable.<sup>185</sup>

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<sup>183</sup>Ibid., Section 12.24.

<sup>184</sup>Ibid., Section 12.28.

<sup>185</sup>Ibid., Section 12.30.

### § 12.34. Continuing or Discontinuing Textbooks

(a) It shall be the duty of the State Board of Education to meet annually at a date to be specified in the public notice required by Section 12.17, Texas Education Code, and at such other times as it may deem necessary for the purpose of considering the advisability of continuing or discontinuing, at the expiration of each current contract, any or all of the state-adopted textbooks in the public schools of Texas and for making such adoptions as are provided for in this chapter.

(b) Adoptions for the total number of different texts shall be so arranged that contracts on not more than one-sixth of the total number of different basal subjects shall expire in any one year or shall be changed in any one year. The series of pamphlet books referred to in Section 12.26(b) of this code shall each be considered as one book.

(c) Before making any change in the adopted series, the board shall, on thorough investigation, satisfy itself that a change is necessary for the best interest of the school children and that such change is consistent with financial economy.

(d) Before the board shall determine to displace any book on which the contract is expiring, it shall, before making a new contract for a new text, ascertain through the office of the commissioner of education the number of usable books of the kind on which the contract has expired or is about to expire, there are on hand, and also the estimated number of books that would be required to supply the needs of the schools of the state using the books for the first, second, and third years immediately succeeding the expiration of the contract on the books. The purpose of furnishing such an estimate of the number of books needed shall be to give the textbook publishers only an approximation as to the possible quantity of books which the state may need, but the state shall not be bound to any specific quantity.

(e) At the time the commissioner of education undertakes to secure a statement of the number of usable books on hand, as provided above, he shall also secure from the superintendents of independent school districts and of common school districts having 300 or more scholastic population and from county superintendents an expression as to whether or not they believe the existing text should be readopted or a new text adopted, and such information shall be for the use of the State Board of Education, but the board shall not be bound to readopt the old text or to adopt a new text by reason of such expression of preference by the superintendents.

(f) The board shall then secure from the publisher of the book on which the contract has expired or is about to expire a bid or offer for the furnishing of such textbooks to meet the actual necessities of the schools of the state during the first-, second-, and/or third-year period, allowing the state however, a margin of 25 percent over, or 25 percent under, the estimated number to be required.

(g) If, upon consideration of the cost of the books required to supply such needs for such a period, it appears to the board that it will be economical to do so, it may make a contract with such publishers to furnish

such books during said first-, second-, and/or third-year period with a view to using up the entire supply of such books on hand instead of wasting the same at the expiration of the original contract. At the expiration of the period, the board shall then make a contract for a textbook on the subject.

(h) Unless new textbooks better suited to the requirements of the schools are offered to supplant existing textbooks at a price and in quality satisfactory to the board, the board shall renew the existing contracts for such period as may be deemed advisable not to exceed a period of six years.

(i) Whenever the contractor supplying any book agrees to renew the contract on the same terms for a period of not less than two years nor more than six years, the members of the State Board of Education shall give preference to the offer of the company holding the contract if they shall thereby secure as good or better books at a lower price than by making a different contract.

(j) It shall always be lawful for the board to renew a contract on such terms that in its judgment may be for the best interest of the state.<sup>186</sup>

Local boards of education are charged with the following duties in regard to textbook selection.

#### § 12.62. Local Adoptions

(a) No public school in the state shall use any textbook unless it has been previously adopted and approved by the State Board of Education.

(b) In each subject of the elementary and high school grades, one or more of the several textbooks of each multiple list adopted may be selected by local school officials; but all of the schools in any one district, or all districts under the supervision of any one county school system (county school board and/or superintendent) must select the same book or books for all of the schools within the system.

(c) Once textbooks are selected from the multiple lists, they shall be continued in use in that school system for the entire period of the adoption or for a minimum period of not less than five years.

(d) Supplementary readers for pre-primer, primer, first, second, and third grades shall be distributed on a quota of not more than 300 percent of the enrollment for each of the grades to which the book is assigned.

(e) Supplementary readers for the fourth through the eighth grades shall be distributed on a quota basis not in excess of 200 percent of the grade enrollment to which the books are assigned.

(f) Agriculture and homemaking textbooks for grades 9 through 12 shall be distributed on a quota basis not in excess of 220 percent of the subject enrollment.

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<sup>186</sup>*Ibid.*, Section 12.34.



(g) All other books not specified in this section shall be supplied on the basis of one book for each pupil enrolled in the subject for which the book is adopted and not to exceed the total enrollment for the subject plus the teachers' copies.<sup>187</sup>

### Utah

In Utah, although the legislature and the State Board of Education are forbidden by law to prescribe textbooks for the common schools, a state-wide textbook selection process is in effect. Statutory provisions for textbook selection are as follows.

Article X, Section 9 of the State Constitution of Utah restricts the legislature and the State Board of Education from selecting textbooks to be used in the public schools.

#### Sec. 9. [Textbooks.]

Neither the Legislature nor the State Board of Education shall have power to prescribe textbooks to be used in the common schools.<sup>188</sup>

Selection of textbooks was once the function of the State Superintendent of Public Instruction and later expanded to include a State Course of Study Committee.<sup>189</sup>

53-14-8. Courses of study.—For the purpose of this act the state superintendent of public instruction shall prepare not later than September 1, 1939, teaching materials and materials of instruction, bulletins, courses of study and visual education aids, such as in his judgment will best accomplish the purposes of this act for the use of boards of education, supervisors, teachers and all other persons employed by any school or other educational agency supported in whole or in part by the State of Utah and shall incorporate the same into the regular course of study for use by schools or other education agencies of the state; such supervision, teaching materials and materials of instruction, bulletins, courses of study, visual education aids and etc. shall also provide suggestions and plans for the volunteer uniting of the efforts of educational, civic, community and church organizations to accomplish the purposes of this act.<sup>190</sup>

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<sup>187</sup>Ibid., Section 12.62.

<sup>188</sup>Utah, Constitution, art. X, sec. 9.

<sup>189</sup>Utah State Board of Education, State Course of Study Committee and Textbook Commission, Policies, Procedures, Practices, Salt Lake City, Utah, 1976, p. 20.

<sup>190</sup>Utah, Code Annotated (1953), Title 53, Chapter 14, Section 53-14-8.

### 53.14.1. State study committee—Personnel—Terms.

A state course of study committee is hereby created consisting of the state superintendent of public instruction and the deans of each of the state schools of education of the University of Utah and the Utah State Agricultural College, three school superintendents to be appointed by the state board of education and five lay citizens to be appointed by the governor by and with the consent of the Senate.

The three local school district superintendents shall be appointed for a term of two years, except that the term of one member as designated by the state board of education shall expire June 30, 1954, and the terms of the other two members as designated by the state board of education shall expire June 30, 1955. The terms of the five lay citizens shall be for four years, except that the term of two members as designated by the governor shall expire June 30, 1955, and three members as designated by the governor shall expire June 30, 1956.

#### Meetings.

The state course of study commission shall meet in January of each year and at such other times as it may find necessary to recommend textbooks and to determine what changes, if any, shall occur in the state course of study for use in the public schools of that state.

#### Function .

The committee shall have the responsibility of formulating a statement of aims, purposes, objectives and philosophy of education as a guide for the public schools of the state, consistent with constitutional and legislative mandates.<sup>191</sup>

Later, the State Course of Study Committee was merged into a State Textbook

Commission to assume the responsibility of selecting books.

53-13-1. Personnel—Merger.—The state textbook commission shall consist of the same persons as are members of the state course of study committee as set forth in section 53-14-1, Utah Code Annotated, 1953, as amended.<sup>192</sup>

53-13-3. Textbooks for district and high schools—Meetings to adopt—Notice.—The state superintendent of public instruction shall call a meeting of the textbook commission at least three months prior to the expiration of any contract for the supply and use of textbooks in the district schools and the high schools and shall give at least sixty days' notice of the time of holding such meeting by publication in a newspaper having general circulation in the state. Such notice shall state the subjects upon which textbooks will be adopted and that sealed proposals will be received by the

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<sup>191</sup>Ibid., Section 53-14-1.

<sup>192</sup>Ibid. Chapter 13, Section 53-13-1.

state superintendent for furnishing such books, the place where and the day and hour when all proposals will be opened, and that the textbook commission reserves the right to reject any and all proposals. A regular meeting shall be held for the adoption of textbooks in 1939, in 1941, in 1943 and each year thereafter, at which time approximately one-fourth of the textbooks shall be adopted for a period of four years; provided, that any textbook found unsatisfactory may be changed, or any textbook of unusual merit may be added to the adopted list, or the length of the period of adoption may be adjusted in some cases as may be necessary and desirable at any regular meeting of the commission.<sup>193</sup>

Limitations to school officials as related to textbooks are defined as follows.

53-13-8. School officials not to act as agent for publishers.—No school officer or teacher in any school in this state shall act as agent for any author, publisher, bookseller or other person to introduce any book, apparatus or furniture or any article whatever into any district in which such officer or teacher is officially employed.

53-13-9. Members of commission not to receive bonus—Penalty.—If any member of the state textbook commission receives from the publisher of any schoolbooks or from any other person interested in the sale or introduction of any books, maps, charts or other school supplies any money or bonus in any manner as an inducement for the recommendation or introduction of any schoolbook or school supplies into the schools of the state, he is guilty of a misdemeanor.<sup>194</sup>

Textbooks that are selected by the State Textbook Commission are required for use in the local school districts.

53-13-10. Use of textbooks mandatory—Penalty.—If any member of the board of education of any school district refuses or neglects to enforce the use of textbooks adopted by the commission, such refusal or neglect is a misdemeanor on the part of such member, and is punishable by a fine not exceeding \$100 and by removal from office.<sup>195</sup>

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<sup>193</sup>Ibid., Section 53-13-3.

<sup>194</sup>Ibid., Sections 53-13-8 through 53-13-9.

<sup>195</sup>Ibid., Section 53-13-10.

### Vermont

In the State of Vermont, textbook selection is a matter of local concern. Each school district selects texts to be used in the public schools. The governing statute which relates to textbook selection is as follows.

Responsibility for the selection of texts is a function of local boards of education subject to the approval of the superintendent of the schools of the district.

#### § 3743. Textbooks, appliances and supplies

The board shall select and provide all textbooks, appliances and supplies required for use in the elementary schools and the textbooks required for use in the secondary schools in the town district which shall be paid for by the district. The selection of textbooks, appliances and supplies shall be subject to the approval of the superintendent of the schools of the district. The board shall provide nonresident pupils attending the schools with the necessary textbooks, appliances and supplies under the regulations the board of education shall prescribe. The board of school directors with the superintendent shall make the rules and regulations it deems proper for the care and custody of all textbooks, appliances and supplies.<sup>196</sup>

### Virginia

Virginia operates a state-wide system of textbook selection with primary responsibility vested in the State Board of Education. Statutory provisions are as follows.

Article VIII, Section 5(d) of the Constitution of the Commonwealth of Virginia specifically refers to the selection of textbooks.

#### Section 5. Powers and duties of the Board of Education.

The powers and duties of the Board of Education shall be as follows:

(d) It shall have the authority to approve textbooks and instructional aids and materials for use in courses in the public schools of the Commonwealth.<sup>197</sup>

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<sup>196</sup>Vermont, Statutes Annotated, Title 16, Chapter 129, Section 3743.

<sup>197</sup>Virginia, Constitution, art. VIII, sec. 5(d).

Within the governing statutes of Virginia, Chapter 14, Sections 22-295 and 22-296 delegate the authority to select textbooks to the State Board of Education.

§ 22-295. State Board to adopt rules and regulations.—The State Board is authorized and directed to adopt rules and regulations governing the purchase of textbooks, adopted by it for use in the public schools, directly from the publishers by the county and city school boards, and governing the distribution and care of such adopted textbooks for the use of children attending public elementary schools in Virginia.

§ 22-296. Selection of textbooks and appliances.—The State Board shall select textbooks and educational appliances, including films, for use in the public schools of the State, exercising such discretion as it may see fit in the selection of books suitable for the schools in the cities and counties respectively.<sup>198</sup>

Change of texts is defined by the following statute.

§ 22-297. Change of textbooks.—No textbook adopted for basal use shall be changed until such book has been in use for a period of not less than six years, subject to renewal from one to four years, unless such book becomes obsolete or unless a change would result in a material decrease in price, and whenever such book is so changed, the State Board may permit the use of the old books for a period of at least three years from the date of such change.<sup>199</sup>

The State Board of Education is also authorized, in conjunction with a state legislative commission, to prepare a text of Virginia's history, government and geography.

§ 22-306.1. Preparation, publication and adoption of certain texts in the public schools; Virginia History and Government Textbook Commission.—

(1) The State Board of Education is authorized and empowered to contract, in conjunction with a State legislative commission, with a publishing firm or publishing firms for preparation, publication and adoption, for exclusive use in the public schools of Virginia, of texts on Virginia's history, government, and geography, prepared under the supervision of such commission and the Board. The State Board is authorized to require exclusive use of such texts in the teaching of such subjects in the public schools of Virginia. Provided that this power shall only be applicable if the Board has heretofore entered into such a contract or contracts, which contracts have been filed with the Division of Statutory Research and Drafting, and are hereby ratified, validated and confirmed in all respects.

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<sup>198</sup>Virginia, Code Annotated (1950), Title 22, Chapter 14, Sections 22-295 through 22-296.

<sup>199</sup>Ibid., Section 22-297.

(2) The Virginia History and Government Textbook Commission created by Senate Joint Resolution No. 5, 1950, is hereby reestablished and continued. The Commission shall be composed of seven members from the State at large appointed by the Governor. The members of the Commission shall hold office for terms of two years expiring on the thirtieth day of June following each regular session of the General Assembly, and thereafter until their successors are appointed.

(3) The Commission and State Board of Education are authorized and directed to discharge their duties under such contracts.

(4) Should the Commission and the State Board of Education be unable to agree as to any matter arising under or in connection with any of such contracts, either the Commission or the Board may refer such matter to the Governor for decision by him or by persons designated by him. Such decision shall be binding upon the Commission and the Board.

(5) The Commission is authorized to employ only such assistants at such reasonable compensation as it deems appropriate.

(6) The members of the Commission shall be paid a per diem of ten dollars a day and expenses for each day they are engaged in business of the Commission. The per diem and expenses and such other expenses as the Commission may incur shall be paid from funds appropriated therefor.

(7) Sixty days prior to the convening of each regular session of the General Assembly, the Commission shall make a report to the Governor and the General Assembly setting forth what has been, and what remains to be done under such contracts.

(8) All actions taken in the name of the Commission by the members of the Commission in office on June thirty, nineteen hundred and fifty-six, and prior to June twenty-seven, nineteen hundred fifty-eight, are hereby ratified, validated and confirmed.

Nothing contained in this section shall be construed to extend the existence of said Commission past June twenty-seven, nineteen hundred fifty-eight.<sup>200</sup>

Individual school districts are subject to the following limitations in regard to textbooks.

§ 22-317. Withholding of textbook funds from counties and cities not complying with chapter.—The State Board is authorized to withhold from any county or city the payment of moneys or any part thereof, herein appropriated for allotment and distribution to such county or city under and pursuant to the provisions of this chapter, if and for so long as the school board of such county or city shall fail or refuse to comply with the provisions of this chapter.

§ 22-318. Exemption or withdrawal of local school boards and school divisions.—Any county or city school board may in any year, by a resolution

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<sup>200</sup>Ibid., Section 22-306.1.

duly adopted by a recorded vote and certified to the State Board not later than June twentieth in such year, withdraw itself and its school division from the operation thereof, and upon such withdrawal such school board and its school division shall not for the following school year of thereafter be subject to the provisions hereof.

§ 22-318.1. Use of basal textbooks not on state-adopted list.—A school board of any school division may in any year use basal textbooks not on the state-adopted list; provided, however, that the school board shall select such books in accordance with the rules and regulations promulgated by the State Board of Education.<sup>201</sup>

### Washington

The responsibility for textbook selection in the State of Washington resides with local school districts. The State is devoid of any control in the selection procedure. The statutes which govern the textbook selection process are as follows.

The governing statutes place the responsibility of textbook selection to the Board of Directors of local school units.

#### 28A.58.103 Instructional materials—Instructional materials committee—Disposition of used or obsolete material

Every board of directors, unless otherwise specifically provided by law, shall:

(1) Prepare, negotiate, set forth in writing and adopt, policy relative to the selection of instructional materials. Such policy shall:

(a) State the school district's goals and principles relative to instructional materials;

(b) Delegate responsibility for the preparation and recommendation of teachers' reading lists and specify the procedures to be followed in the selection of all instructional materials including text books;<sup>202</sup>

(c) Establish an instructional materials committee to be appointed, with the approval of the school board, by the school district's chief administrative officer. This committee shall consist of representative members of the district's curriculum development committees, and, in the case of districts which operate elementary school(s) only, the educational service district superintendent of schools, one of whose responsibilities shall be to assure

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<sup>201</sup>Ibid., Sections 22-317 through 22-318.1.

<sup>202</sup>Washington, Revised Code Annotated, Title 28A, Section 28A.58.103 (1)(a), (b).

the correlation of those elementary district adoptions with those of the high school district(s) which serve their children;<sup>203</sup>

(d) Provide for terms of office for members of the instructional materials committee;

(e) Provide a system for receiving, considering and acting upon written complaints regarding instructional materials used by the school district;

(f) Provide free text books, supplies and other instructional materials to be loaned to the pupils of the school, when, in its judgment, the best interests of the district will be subserved thereby and prescribe rules and regulations to preserve such books, supplies and other instructional materials from unnecessary damage.

Recommendation of instructional materials shall be by the district's instructional materials committee in accordance with district policy. Approval shall be by the local school district's board of directors.

Districts may pay the necessary travel and subsistence expenses for expert counsel from outside the district. In addition, the committee's expenses incidental to visits to observe other districts' selection procedures may be reimbursed by the school district.

Districts may, within limitations stated in board policy, use and experiment with instructional materials for a period of time before general adoption is formalized.

Within the limitations of board policy, a school district's chief administrator may purchase instructional materials to meet deviant needs or rapidly changing circumstances.

(2) Establish a depreciation scale for determining the value of texts which students wish to purchase.

Local boards of school directors may declare selected instructional materials obsolete and dispose of them by sale to the highest bidder, following public notice in a newspaper of general circulation in the area. [Amended by Laws 1971 ch 48 § 29; Laws 1st Ex Sess 1975 ch 175 § 109.]<sup>204</sup>

### West Virginia

West Virginia allows local school districts the right to select texts from a state-approved list. The selection of supplementary books, however, is not a state concern.

Governing statutes relating to the textbook selection process are as follows.

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<sup>203</sup>State of Washington, Superintendent of Public Instruction, Guidelines for the Development of Instructional Materials Selection Policies, errata to Revised Code of Washington Annotated, Title 28A, Section 28A.58.103(1)(c), November 1975.

<sup>204</sup>Washington, op. cit., Section 28A.58.103(1)(d) to end.



Within the State of West Virginia, the State Board of Education approves a multiple list of texts to be used in the public schools.

**§ 18-2A-2. Request for samples and bids; deposit by bidder; selection, approval and publication of multiple list.**

Prior to each adoption year after the one thousand nine hundred seventy-two adoption, and not later than August first, the state board by written request or otherwise shall ask the various publishers of textbooks in the United States to submit samples and prices on all textbooks required to be taught in the public elementary schools of the State for the current adoption period.

All bids or proposals shall be under seal, and each bidder shall deposit in the state treasury such sum of money as the state board may designate, such deposit to be not less than one thousand dollars, and not more than three thousand dollars; and such deposit shall be forfeited to the general school fund if such bidder shall fail or refuse to make and execute such contract and bond as are herein required in case of acceptance of all or part of his bid, and otherwise shall be returned to such bidder after the contract has been made.

All bids shall be opened by the state board in public session. After considering the subject matter, printing, binding, general suitability, and prices of books submitted, the board shall, prior to March first of the year in which the multiple adoptions are made by the state board of education, establish a committee of teachers and other educational specialists not to exceed fifteen members and with the aid of said committee, shall on or before December first, prior to county adoptions, select, approve and publish a list of at least five books or series of books in each subject and grade in the elementary subjects required to be taught. If less than five books or series of books in any subject and grade are offered, the state board may list fewer than five. The committee of teachers and other educational specialists shall report their recommendations to the state board on or before November first of the year preceding the adoption by the county board. (1953, c. 76; 1972, c. 106.)<sup>205</sup>

Upon the approval of a recommended list of texts, local boards of education select from this list textbooks to be used by local school systems.

**§ 18-2A-5. Selection by county boards.**

Textbook publishers, upon requests of county superintendents, shall furnish to county boards of education the requested sample copies of books that were selected and placed on the state multiple list of textbooks by the state board of education. The textbook publishers shall ship and bill to the

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<sup>205</sup>West Virginia, Code Annotated (1977 Replacement), Chapter 18, Article 2A, Section 18-2A-2.

county boards of education at the lowest wholesale prices with shipping charges prepaid. After the counties have made their textbook adoptions and certified them to the state board of education, all sample copies of books may be returned to the publishers from whom obtained, shipping charges to be paid by the publisher. County boards may, if they elect to do so, retain the sample books, but shall pay the publishers the lowest wholesale prices for them.

The county board of education shall, upon recommendation of the county superintendent with the aid of a committee of teachers not to exceed five members and not later than April first of the year following that in which the multiple list for the group was made and approved, have the option to select from the state multiple list one or more book(s) or series of books for each subject and grade to be used as exclusive basal textbooks in the county for a period of five years.

After the county board of education has adopted the basal textbooks for use in the county, and not later than April fifteenth, the county superintendent shall send to the state board of education and the respective publishers a complete list of books adopted, properly certified by the president of the county board of education, in such form as the state board of education shall prescribe. (1953, c. 76; 1963, c. 45; 1972, c. 106.)<sup>206</sup>

Provisions for use of supplementary texts are defined as follows.

§ 18-2A-7. Retail outlets; exchange privilege; use of supplementary books.

It shall be the duty of each contractor at his own expense to place with responsible dealers, in no fewer than three magisterial districts in each county, at least two weeks before the beginning of school in any district in the county where such books are used, a sufficient number of books to supply the demand. He shall also arrange for the exchange of books at such places, allowing pupils or boards of education an exchange price as liberal as granted on the same books to any city, county, or state in the United States, like conditions prevailing. The exchange privilege shall extend through one entire school year. Nothing in this article is to be construed as preventing the use of supplementary books, provided they do not displace the adopted books, nor the use of more advanced books in such schools as may be ready for the same. (1953, c. 76.)<sup>207</sup>

Other provisions for selection of texts are as follows.

§ 18-2A-8. Textbooks must be approved and listed; when changes of textbooks may be effected; rules and regulations.

No textbook shall be used in any public elementary school in West Virginia as a basal textbook unless it has been approved and listed on the state multiple list of textbooks by the state board of education. Any changes of

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<sup>206</sup>Ibid., Section 18-2A-5.

<sup>207</sup>Ibid., Section 18-2A-7.

textbooks made by the state board of education shall not become effective until grades and classes of the respective county school districts have completed work for which the adopted book then in use was originally intended. The state board of education may upon request by a county board of education and upon justification of that request, and subsequent to the adoption by a county board of education, approve the adoption of additional books to meet the needs of specific children which were not provided for in the original adoption. Nothing in this section shall apply to the supplementary books that are needed from time to time.

The state board of education is authorized to make such rules and regulations as it may deem necessary and expedient to carry out the provisions of this article. (1953, c. 76; 1972, c. 106.)<sup>208</sup>

Limitations are placed upon school officials in regard to the textbook selection process.

§ 18-2A-9. Gifts and bribes to influence adoption of textbooks a felony; penalty.

Any member of the state board of education, any county superintendent, any member of a county board of education or any other person who shall receive, solicit, or accept any gift, present, or thing of value to influence him in his vote for the adoption of books, or any person who shall either directly or indirectly give or offer to give any such gift, present, or thing of value to any person to influence him in voting for the adoption of books, shall be guilty of a felony, and, upon conviction thereof, shall be punished by confinement in the penitentiary for not less than one year nor more than three years. (1953, c. 76.)<sup>209</sup>

Wisconsin

Wisconsin's textbook selection procedure is at the discretion of local school districts. Limitations as to which texts are to be used are within the confines of the governing statutes. The legal basis for textbook selection is as follows.

The power to select textbooks in the State of Wisconsin resides with local boards of education.

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<sup>208</sup>Ibid., Section 18-2A-8.

<sup>209</sup>Ibid., Section 18-2A-9.

### 118.03 Textbooks

(1) (a) The school board shall adopt all the textbooks necessary for use in the schools under its charge. The list of the adopted books shall be filed with the school district clerk.

(b) The school board may purchase textbooks and sell them to the pupils at cost or it may designate agents of the school district to sell the text books to the pupils. The agents, at stated times, shall make settlement with the school district for books sold. The agents may add a selling commission which shall not exceed 10% of the net price.

(c) No dealer in textbooks may sell any books at a price to exceed 15% above the net list prices, transportation added thereto.

(d) Any person violating this subsection may be fined not less than \$25 nor more than \$100.

(2) No book may be adopted for use or be used in any public school which falsifies the facts regarding the history of our nation, which defames our nation's founders or misrepresents the ideals and causes for which they struggled and sacrificed or which contains propaganda favorable to any foreign government.<sup>210</sup>

### Wyoming

Wyoming's procedure for textbook selection is a local function. The State Constitution prohibits the legislature and the State Superintendent of Public Instruction from selecting textbooks. Statutory provisions for textbook selection are as follows.

Article VII, Section 11 of the State Constitution of Wyoming relates directly to the selection of texts.

Sec. 11. Textbooks.—Neither the legislature nor the superintendent of public instruction shall have power to prescribe text books to be used in the public schools.<sup>211</sup>

The selection of texts is a function of local boards of education.

§ 21.1-181. Boards of trustees to purchase and lend to pupils; responsibility of pupils; sale of surplus.—(a) The board of trustees of each school district within the state shall purchase all textbooks necessary to the operation

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<sup>210</sup>Wisconsin, Statutes Annotated (West), Title XIV, Chapter 118, Section 118.03.

<sup>211</sup>Wyoming, Constitution, art. VII, sec. 11.

of the schools under its jurisdiction. Each such board may in addition purchase such supplies as it deems necessary. Such textbooks and supplies shall be held as the property of the district and shall be loaned to pupils free of any charge; provided, the pupils shall be held responsible for damage to, loss of, or failure to return such books and supplies except those that by their nature are expended during the course of study.

(b) The board may sell to any pupil or parent, at its cost, any surplus books or supplies it has purchased and which such pupil or parent desires to purchase for his own use.<sup>212</sup>

Instruction in specific areas are required by the following governing statutes.

§ 21.1-178. Schools to adhere to minimum standards promulgated by the state board of education.—The board of trustees of each school district within the state shall cause the schools under its jurisdiction to adhere to the minimum standards relating to educational programs promulgated by the state board of education.

§ 21.1-179. Instruction in state and federal constitutions required; satisfactory examination a prerequisite to graduation.—All schools and colleges in this state that are supported in any manner by public funds shall give instruction in the essentials of the United States constitution and the constitution of the state of Wyoming, including the study of and devotion to American institution and ideals, and no student shall receive a high school diploma, associate degree or baccalaureate degree without previously passing a satisfactory examination on the principles of the constitution of the United States and the state of Wyoming. The instruction shall be given for at least three (3) years in the elementary grades and for one (1) year each in the secondary and college grades.<sup>213</sup>

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<sup>212</sup>Wyoming, Statutes Annotated (1957), Title 21, Section 21.1-181.

<sup>213</sup>*Ibid.*, Sections 21.1-178 through 21.1-179.

## SUMMARY

The evolution of education in general and the textbook selection process in particular parallels changes that have occurred in educational thought and subsequent legislative enactments. The Federal government has allowed the respective states to remain as the agencies responsible for educating the youth of America. Social conditions, educational thinking, and prevailing sentiments at the time allow for changes in the governing statutes of the various states. In regard to how textbooks are to be selected, the preceding section has presented the selection processes as they now exist. Certainly through additional enactments, repeals, and revisions of the statutes, the processes will change as society changes.

The plenary powers granted to the states by the Tenth Amendment are reflected in educational policies of the states and the various methods employed to select textbooks to be used in the public schools. Whether directly involved in the textbook selection process or delegated to tribunal agencies, the state legislatures are empowered to determine how textbooks are to be selected.

Textbook selection in the 50 states and the District of Columbia vary. Clusters are evident in the selection methods of the states; however, neighboring states may vary in this procedure. To establish a definite pattern is virtually impossible. The rules and regulations of the states governing the selection process have many similarities and differences as well. Legislatures that have recently concerned themselves with textbook selection have been acutely aware of conditions or inequities within society. Statutes recently adopted have reflected these increased concerns. Textbook selection is indeed affected by the American public and the prevailing beliefs of society at a particular time. Changes that occur in one section of the country can have an impact on the procedure for adopting textbooks in

another. Several states do not address how textbooks are to be selected while others define in detail by governing statutes the requirements for a textbook that is to be used in the public schools of that state.

In conclusion, the governing statutes of each state in regard to the selection of textbooks mirrors the concerns of the state's populace. Whether recently enacted or a continuation of past procedures, the selection process is generally reflective of the educational views of the citizenry. To describe a better or more desirable system would be unfair. From a pragmatic standpoint, if the procedure employed is workable, it must be the best for that state. However, as will be pointed out in Chapter IV, an increased awareness for what is legal must be foremost in the thoughts of those directly concerned with how textbooks are to be selected.

Chapter IV

LEGAL ASPECTS OF TEXTBOOK SELECTION

OVERVIEW

In most instances, textbooks are selected and adopted in an orderly manner of operation. The individuals involved in the textbook selection process function within the confines of legal requirements and may never be subject to any type of judicial inquiry. Concerns by individuals regarding textbook selection may, however, become a legal issue and, as such, be subject to judicial review. What was once considered as an educational issue may eventually become an actual court case.

In discussing legal issues, it should be remembered that a court decision relates to the particulars of that case. In reviewing various court cases, however, certain legal precedents have been established and have evolved to become what is known as "case law." Often in judicial rulings, judges will depend heavily upon decisions rendered in similar situations and the opinions of influential judges. The decisions reached by the United States Supreme Court establish the greatest precedent since the rulings are binding throughout all the states.<sup>1</sup>

Drawing specific conclusions and generalizations is most difficult in legal research. Although a legal precedent has been established concerning a particular issue, an individual still has the right to pursue a grievance in court.<sup>2</sup> Even though the legal issues may be

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<sup>1</sup>Alan Abeson, "Litigation," in Public Policy and Education of Exceptional Children, ed. Frederick J. Weintraub (Reston, Virginia: Council for Exceptional Children, 1976), p. 254.

<sup>2</sup>*Ibid.*



similar to questions already decided by the courts, individual aspects of a particular case may produce a different ruling. There is no device for determining in advance of a court's ruling if what will be stated will be educationally defensible.<sup>3</sup>

Court cases related to textbooks have been numerous. Upon examination of the cases, many relate to exactly how textbooks are selected for use in the public schools. The natural question to ask is why have the courts been involved in the textbook selection process. The answer is complex and involves several issues. In reviewing court cases related to educational issues, most decisions have included statements to the effect that courts do not wish to become involved with day-to-day operation of public schools or engage in lengthy debates as to the wisdom of certain administrative practices. In Hobson v. Hansen, Judge J. Skelly Wright stated that it was regrettable that the court had to become involved in areas alien to the court's expertise; however, the judiciary is often required to find solutions for educational problems.<sup>4</sup>

Upon examining the issues of textbook selection, a clearer insight can be derived. As pointed out by Kirp, selection of textbooks has been a primary instrument in the political and religious socialization of children in the public schools.<sup>5</sup> Whenever such a broad impact is involved, the American public will express concern. Often, such concern leads to legal confrontation which the courts are compelled to settle.

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<sup>3</sup>E. Edmund Reutter and Robert R. Hamilton, The Law of Public Education (Minneapolis, New York: Foundation Press, Inc., 1970), p. 109.

<sup>4</sup>Hobson v. Hansen, 269 F. Supp. 401 (Washington, D. C., 1967), p. 517.

<sup>5</sup>David L. Kirp and Mark G. Yudof, Educational Policy and the Law: Cases and Materials (Berkeley, California: McCutchan Publishing Company, 1974), p. 114.

Textbooks have been described as the primary teaching tools available to the classroom teacher.<sup>6</sup> The importance is related to how well the texts are used by the teacher and student. In Donahoe v. Richards, the court stated that education is a matter of public concern and of paramount importance. The court also reiterated that the officials charged with the responsibility of textbook selection are in fact making judgmental decisions, decisions which will affect the lives of many school children.<sup>7</sup> Judgmental decisions, although directed by statutory guidelines, are subject to public review which may lead to judicial inquiry as the above case so vividly illustrates.

Teaching procedure, to a certain extent, is directly related to the textbooks that are available for use in the classroom.<sup>8</sup> The methods used in the operation of the schools and the resulting effectiveness are under the close surveillance of interested citizens. Public discussion of the schools' instructional plan is coupled with a discussion of what methods should be used to develop the desired public school program. Litigations have developed as a result of problems centering around methodology.

#### ORGANIZATION OF CASES SELECTED FOR REVIEW

Chapter IV is an historical and descriptive survey of selected court cases that have evolved as a result of public interest in the textbook selection process. Some of the cases

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<sup>6</sup>"Is Your District Using the Right Textbooks?," School Management 8 (October 1964): 80.

<sup>7</sup>Donahoe v. Richards, 61 Am. Dec. 256 (Maine, 1854).

<sup>8</sup>Evelyn R. Fulbright and Edward C. Bolmeier, Courts and the Curriculum (Cincinnati: The W. H. Anderson Company, 1964), pp. 79, 135.

involve personal interests while others are group endeavors to alter the methods and procedures employed to select textbooks. Whatever may be the reason, the decisions rendered have affected the educational process in the United States and will continue to do so in the future.

In organizing the cases for review in this chapter, four areas of distinction were chosen in order to clarify the legal issues involved. The cases were selected as pertaining to:

1. Textbook selection and the law,
2. Censorship and textbooks,
3. The treatment of minorities in textbooks, and
4. The textbook selection process.

Several of the cases concerned two or more of the topics. These cases are placed in each of the related areas; however, in the analysis section of this chapter, the issue that is most evident will be the criterion for review purposes.

The cases are further presented in a chronological sequence to show an evolutionary process of public interest in textbook adoption. The concerns at one period of time may or may not continue; therefore, the cases surveyed will illustrate public interests at a particular time. Many cases pertain to similar subjects and issues in the textbook adoption process. Therefore, in order to avoid repetition, the earliest decision that narrates the legal aspect in question is presented.

Both Federal and state cases are reviewed in order to analyze national and state concerns. State cases often have similar issues in different parts of the country and may represent a national concern as well. Once again, the earliest judicial finding is presented to illustrate the legal issue in question.

One of the Federal cases is still in litigation; therefore, no decision is presented. The importance of the case — the treatment of minorities — cannot be overlooked. The decision,

which is expected in late 1978, will have a definite bearing on the legal aspects of textbook selection.

The first series of court cases selected for review relate to textbook selection and the law. Included in this category are the following Federal and state cases along with a brief statement to illustrate the issue.

#### Federal Case

Vaughan v. John C. Winston Company, 83 F. 2d 370 (Tenth Cir., 1936)

Failure by a public official to follow state statutes in regard to textbook selection.

#### State Cases

1. Donahoe v. Richards, 61 Am. Dec. 256 (Me., 1854)

School officials not liable for judgment in textbook selection relating to religion.

2. State ex rel. Roberts v. School Directors of Springfield, 74 Mo. 21 (1881)

Failure of local school board to promptly institute newly-adopted texts.

3. Effingham v. Hamilton, 10 So. 39 (Miss., 1891)

Failure of a local superintendent to follow governing statutes in regard to textbook selection.

4. State v. Womack, 29 P. 939 (Wash., 1892)

Attempted bribery of a state textbook official.

5. Leeper v. State, 53 S. W. 962 (Tenn., 1899)

Violation of governing statute by a teacher in refusing to use state-adopted textbooks.

6. Rand, McNally and Company v. Royal, 78 P. 1103 (Wash., 1904)

Failure of a school district to use state-adopted textbooks.

7. State v. Wick, 106 N. W. 268 (Iowa, 1906)

Violation of state statute prohibiting a school official from acting as a textbook dealer.

8. School District of Borough of Ferndale, Cambria County v. School District of Conemaugh Township, Somerset County, 191 A. 611 (Penn., 1937)

School district entitled to financial reimbursement for supplying textbooks for students of an adjoining school district.

9. Carroll v. Lucas, 313 N. E. 2d 864 (Ohio, 1974)

School officials not liable for judgment on moral grounds in textbook selection.

10. Washington School District No. 6 of Maricopa County v. Superior Court of Maricopa, 541 P. 2d 1137 (Ariz., 1975)

Advisory textbook commission meeting not subject to open meeting law.

The second category of cases consists of Federal and state cases related to the censorship of textbooks. The cases selected, along with a brief description, are as follows.

#### Federal Cases

1. Epperson v. Arkansas, 393 U. S. 97, 21 L. Ed. 2d 228 (1968)

State statute prescribing textbooks to be selected which oppose the theory of evolution held unconstitutional.

2. President's Council, District 25 v. Community School Board No. 25, 457 F. 2d 289 (Second Cir., 1972), 93 S. Ct. 308 (1972)

Censorship of textbook on moral issues.

3. Wright v. Houston Independent School District, 366 F. Supp. 1208 (S. D. Tex., 1972), 486 F. 2d 137 (Fifth Cir., 1973)

Censorship of textbook that advocates the theory of evolution.

4. Williams v. Board of Education of the County of Kanawha, 388 F. Supp. 93 (S. D. W. Va., 1975)

Censorship of textbooks involving religious and privacy rights.

5. Daniel v. Waters, 515 F. 2d 485 (Sixth Cir., 1975), 399 F. Supp. 510 (M. D. Tenn., 1975)

State statute requiring adopted textbooks to teach evolution as theory along with the Biblical account of Creation held unconstitutional.

#### State Cases

1. Donahoe v. Richards, 61 Am. Dec. 256 (Me., 1854)

Use of the Bible as a textbook of literature held constitutional.

2. Rosenberg v. Board of Education of the City of New York, 92 N. Y. S. 2d 344 (1949)

Censorship of textbooks because of racial overtones held invalid.

3. Carroll v. Lucas, 313 N. E. 2d 864 (Ohio, 1974)

Censorship of textbooks on moral grounds.

The third category includes selected cases that relate to the treatment of minorities in textbooks. Included in this category are the following Federal and state cases followed by a brief statement to illustrate the issue.

#### Federal Case

- Loewen v. Turnipseed, C. A. No. GS75-147-S (N. D. Miss., 1976)

(Decision to be rendered.) Petition objecting to the treatment of blacks in a history text.

#### State Case

- Rosenberg v. Board of Education of the City of New York, 92 N. Y. S. 2d 344 (1949)

Racial overtones relating to Jewish people in textbooks held invalid.

The fourth and final category of cases reviewed in this chapter relates to Federal and state cases pertaining to the textbook selection process. Cases selected for this category, along with a brief description of each issue, are as follows.

#### Federal Cases

1. Iverson v. Board of School Commissioners, 39 F. 735 (D. Ind., 1889)

State statutes to be followed in the textbook selection process.

2. MacMillan v. Johnson, 269 F. 28 (E. D. Mich., 1920)

The legality of state-approved list of textbooks for selection held valid.

3. Charles Scribner's Sons v. Board of Education, 278 F. 366 (Seventh Cir., 1921)

Publishers compelled to supply textbooks pursuant to contract.

4. Funk and Wagnalls Company v. American Book Company, 18 F. 2d 739 (Second Cir., 1927)

State textbook commissions limited in prescribing supplementary texts.

#### State Cases

1. People ex rel. Bellmer v. State Board of Education, 49 Cal. 684 (1875)

State statute to be followed in regard to the change of textbooks.

2. State ex rel. Flowers v. Board of Education, 35 Ohio 368 (1880)

Local officials required to follow governing statutes in the textbook selection process.

3. State ex rel. Roberts v. The School District of Springfield, 74 Mo. 21 (1881)

Local officials required to use newly-adopted textbook pursuant to state statutes.

4. Effingham v. Hamilton, 10 So. 39 (Miss., 1891)

Local superintendents to follow governing statutes in regard to the textbook selection process.

5. Campana v. Calderhead, 44 P. 83 (Mont., 1896)

Local boards of education empowered to select textbooks in the absence of governing statute.

6. Leeper v. State, 53 S. W. 962 (Tenn., 1899)

Teachers compelled to use state-adopted textbooks.

7. Rand, McNally and Company v. Royal, 78 P. 1103 (Wash., 1904)

Local school district required to use state-adopted textbooks.

8. State ex rel. Moore v. Millsap, 108 S. W. 1113 (Mo., 1908)

Selection of textbooks to be the duty of teachers in the absence of governing statutes and local school district initiative.

9. State ex rel. Simon v. Fairchild, 125 P. 40 (Kan., 1912)

A uniform series of books to include the same book for a grade or subject.

10. Griggs v. Board of Education of Atlanta, 90 S. E. 48 (Ga., 1916)

Readoption of textbooks to follow a definite time period pursuant to state statutes.

11. School District of Borough of Ferndale, Cambria County v. School District of Conemaugh Township, Somerset County, 191 A. 611 (Penn., 1937)

The term "textbooks" to encompass all the books used in class.



SELECTED COURT CASES REGARDING  
TEXTBOOK SELECTION AND THE LAW

Federal Case

Vaughan v. John C. Winston Company  
83 F. 2d 370 (Tenth Cir., 1936)

Facts

On appeal from the District Court of the United States for the Western District of Oklahoma, the Tenth Circuit Court of Appeals was compelled to support an earlier injunction concerning violation of an Oklahoma statute dealing with textbook adoption. John C. Vaughan, State Superintendent of Public Instruction of Oklahoma and Secretary of the Oklahoma Textbook Commission had failed to duly exercise his duties in regard to the selection of certain textbooks supplied by John C. Winston Company. Vaughan failed to submit to local school districts a list of textbooks that had been selected by the State Textbook Commission as was prescribed by Oklahoma state statute.<sup>9</sup> Not only did the Superintendent fail to send the list but also undertook to usurp the powers vested by the legislature in the Textbook Commission by sending a circular letter to school authorities which falsely stated that school authorities were to purchase texts that were in use the previous year.<sup>10</sup>

Decision

The Court stated that Vaughan had failed to perform the prescribed duties and by such action had, for all practical purposes, repealed the textbook laws of Oklahoma.<sup>11</sup>

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<sup>9</sup>Vaughan v. John C. Winston Company, 83 F. 2d 370 (Tenth Cir., 1936), p. 371.

<sup>10</sup>*Ibid.*, p. 372.

<sup>11</sup>*Ibid.*

In affirming the lower court's decision, the Appeals Court enjoined Vaughan from sending any more untrue letters slandering John C. Winston Company's contract which had been duly exercised by a substitute secretary of the Commission.<sup>12</sup> Vaughan was also ordered to send letters to school authorities to correct the untrue statements made in earlier letters to undo the damage done as much as possible.<sup>13</sup>

### Discussion

The precedent set forth in Vaughan v. John C. Winston was to effect all states with textbook commissions. Officials empowered with certain duties in regard to the textbook selection process granted by governing statutes are compelled to perform the prescribed duties and violation of said statutes places the responsibility of rectifying the situation with persons who have committed unlawful acts. Even though individuals vested with specified authority for textbook selection may have compelling reasons for not performing the duties, the individuals are not beyond reproach of the law.

### State Cases

State ex rel. Roberts v. School Directors of Springfield  
74 Mo. 21 (1881)

### Facts

At issue in this case was a local school district's refusal to implement the use of textbooks properly selected pursuant to state statute. The school directors of Springfield, Missouri had been made aware of the proper new selection but had insisted that it was not

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<sup>12</sup>Ibid., p. 373.

<sup>13</sup>Ibid., p. 374.

at the local board's discretion that such books so selected are to be used in the public schools of that district only when the school directors deemed practicable.<sup>14</sup>

### Decision

The Court stated that the statute made it the absolute duty of the directors of the local school board to introduce the newly-adopted texts into the schools of the district. The absolute duty was not when the directors thought best nor when considered to be in the best interest of the pupils or patrons but with all practical speed. The school directors had failed to perform the duty imposed by statute which forced the Court to intercede.<sup>15</sup>

### Discussion

At issue in this case was the failure of a local school governing body to institute the use of newly-adopted textbooks. By so ordering the school directors to act, the Court dictated that statutes must be followed in the textbook selection process. The case was to set a precedent that agencies and individuals involved in the textbook selection process were impelled to perform duties as prescribed by law.

Effingham v. Hamilton  
10 So. 39 (Miss., 1891)

### Facts

The Superintendent of Holmes County Schools had called for a convening of the textbook selection committee as prescribed for by state statute. Upon recommendations of the local committee, the Superintendent failed to perform the prescribed duty of con-

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<sup>14</sup>State ex rel. Roberts v. School Directors of Springfield, 74 Mo. 21 (1881), p. 22.

<sup>15</sup>Ibid., p. 23.

tracting with the publisher of the selected books. Instead, the Superintendent replaced several members of the selection committee, called for another adoption meeting, and upon a differing recommendation by the selection committee, contracted for the new adoptions. The first adopted publishers petitioned the Court to force the Superintendent to contract with them.<sup>16</sup>

### Decision

The Court agreed that the Superintendent had been unlawful in the conduct of his duties. The adoption made by the first textbook selection committee was indeed the rightful adoption; however, to change textbooks which had already been purchased by patrons of the schools was not in the best interest of the public. To legally require the Superintendent to contract with the publishers of the earlier adopted texts would be subordinate to the interests of the public.<sup>17</sup>

### Discussion

The key issue in this case was the ruling of the Court not with either the plaintiff or the defendant but with the public. The Superintendent could perhaps be held liable for such actions; however, to force the general public to suffer was of greater consequence than the plaintiff's contention.

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<sup>16</sup>Effingham v. Hamilton, 10 So. 39 (Miss., 1891).

<sup>17</sup>Ibid., pp. 39-40.

State v. Womack  
29 P. 939 (Wash., 1892)

Overview

Contracting for textbooks often involves great sums of money. Individuals empowered to select textbooks have great responsibilities and, as with other public officials, are often subject to attempts by other persons to influence the officials' judgment.

Facts

Upon appeal from the Thurston County Superior Court, State of Washington, the state sought to have four individuals tried for attempting to bribe a member of the State Board of Education. The Board, among other duties, was to select textbooks to be used in the public schools of Washington. The attempted bribe was after the State Board of Education had made selections, and the influence sought was to reconsider the original vote taken by the Board. The defendants contended that since the alleged bribe had occurred after the original selections were made, in essence, no crime was committed.<sup>18</sup>

Decision

The Court stated that by statutory provision the State Board of Education could reconsider the selections by a three-fourths vote of the Board. A legislative or deliberative body of any kind has the power to reconsider any actions previously made so long as state statutes are followed. There is no parliamentary law which would prohibit the moving for a recommendation of a vote during the same session as was the issue in State v. Womack. The Court remanded the lower court with instructions to have the case in point tried.<sup>19</sup>

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<sup>18</sup>State v. Womack, 29 P. 939 (Wash., 1892), pp. 939-40.

<sup>19</sup>Ibid., p. 942.

## Discussion

The implications of this case not only concern the attempted influencing of members charged with the selection of textbooks and reprisal thereof but relate to the session involved at which textbooks are selected. Only when the adoption procedure was completed was a formalized reconsideration vote necessary.

Leeper v. State  
53 S. W. 962 (Tenn., 1899)

## Overview

Once a textbook has been duly selected as provided for by state statute, must the text be used in lieu of other texts in the same subject area by the teacher? This was the question confronting the court in what proved to be a landmark decision.

## Facts

Edward Leeper was a public school teacher at School No. 5, Sixth District of Blount County, Tennessee. After the State Textbook Commission had duly adopted and prescribed for use in the public schools of Tennessee a specified geography book, Leeper refused to teach geography from the text, preferring instead to use two other books on the same subject. The case had been tried in the Circuit Court at which time Leeper had been convicted of violating the textbook law of the State of Tennessee.<sup>20</sup>

## Decision

The Court affirmed the decision of the lower court.<sup>21</sup> In making the decision, the Court stated that in selecting a textbook, the state, through the textbook commission, was

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<sup>20</sup>Leeper v. State, 53 S. W. 962 (Tenn., 1899).

<sup>21</sup>*Ibid.*

in fact attempting to act in the public's best interest in regard to economics of selection, quality of books, and uniformity of adoption. Citing that the authority of the state over schools is a legislative one, the Court ruled that the state must have an unrestrictive right to prescribe methods without judicial intervention excepting constitutional violations.<sup>22</sup>

### Discussion

The precedent established in this case was to have far-reaching effects. Teachers were impelled to use texts that were duly adopted for the public schools. The Court reaffirmed the power of the state and its legislature in the control and functioning of public schools.

State v. Wick  
106 N. W. 268 (Iowa, 1906)

### Overview

Many states have statutory provisions that prohibit individuals involved in the textbook selection process from acting as textbook agents. The case in point relates to such an individual and the constitutionality of the statute forbidding such involvement.

### Facts

The defendant in this case was one of the directors of the Independent School District of New Hartford, Iowa. The defendant was also a dealer in school books and supplies and sold such books and supplies to pupils of the public schools in the Independent School District of New Hartford. The defendant contended that since the district directors

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<sup>22</sup>Ibid., p. 965.

had not prescribed a designated dealer from which textbooks were to be purchased, the state statute was not applicable in this instance.<sup>23</sup>

### Decision

The Court ruled that the statute in question did relate to the defendant; and as such, the defendant was acting as an agent or dealer in school textbooks and supplies. Although not a designated dealer in school textbooks, the defendant did have the authority as a school director of the Independent School District of New Hartford to assist in the prevention of such a dealer being designated.<sup>24</sup>

### Discussion

The legality of a state statute preventing individuals involved in the textbook selection process from having vested interests in same was upheld. The precedent established in this case was to assist other states in enforcing similar statutes.

Washington School District No. 6 of Maricopa County v.  
Superior Court of Maricopa  
541 P. 2d 1137 (Ariz., 1975)

### Facts

The Board of Trustees of Washington School District No. 6 of Maricopa County, Arizona brought a special action seeking relief from the order of the Superior Court of Maricopa County directing a permanent injunction restraining the School District from proceeding with the selection of textbooks for use in the District based upon any reference

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<sup>23</sup>State v. Wick, 106 N. W. 268 (Iowa, 1906).

<sup>24</sup>Ibid., p. 270.



to the reports or actions of a textbook selection committee. The injunction was the result of a petition filed with the Superior Court that the meetings of the Textbook Evaluation Committee were subject to the Arizona Open Meeting Law; and as such, the law had been violated.<sup>25</sup>

The plaintiffs contended that in order to comply with the statutory obligations, the school board established a Textbook Evaluation Committee to act in an advisory capacity. The members of the Committee have no official status by statute and no power to act except as the board may direct.<sup>26</sup>

### Decision

The Court ruled that the Open Meeting Law does not apply to advisory committees. The law does not encompass groups which are organized and meet for the purpose of collecting information, making recommendations, and rendering advice but which have no authority to make governmental decisions and act for the state. The injunction was lifted.<sup>27</sup>

### Discussion

Applying the principles stated in the case, the assumption can be made that unless an agency or committee directly selects textbooks, the same agency or committee is immune from open meeting statutes. However, if a group is empowered to act for the state in the selection of textbooks, the meetings are open to the public as provided for by state statute.<sup>28</sup>

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<sup>25</sup>Washington School District No. 6 of Maricopa County v. Superior Court of Maricopa, 541 P. 2d 1137 (Ariz., 1975), pp. 1137-38.

<sup>26</sup>*Ibid.*, p. 1138.

<sup>27</sup>*Ibid.*, p. 1139-41.

<sup>28</sup>*Ibid.*, p. 1139.

## SELECTED COURT CASES REGARDING CENSORSHIP AND TEXTBOOKS

### Federal Cases

#### Epperson v. Arkansas

393 U. S. 97, 21 L. Ed. 2d 228 (1968)

### Overview

The implications as set forth by this landmark case have had tremendous effect on the educational process in the United States. The teaching of evolution has historically been a center of controversy in the public schools of the United States. The case in point was to have tremendous implications regarding the rights of individual states to specify the curriculum in the public schools.

### Facts

A high school biology teacher in the public schools of Little Rock, Arkansas was concerned with reprisal that might be received from teaching Darwin's Theory of Evolution. The teaching of evolution violated a statute passed by the Arkansas Legislature in 1928. The statute forbade or made it unlawful for any teacher in the state to teach that man was a descendant of a lower form of animal. The statute also forbade any teacher, textbook commission, or other authority exercising the power to select textbooks to adopt any textbook that teaches the doctrine or theory that mankind descended or ascended from a lower order of animal.<sup>29</sup> A lower court held that the statute violated the Fourteenth Amendment to the United States Constitution.<sup>30</sup> Upon appeal to the Supreme

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<sup>29</sup>Epperson v. Arkansas, 21 L. Ed. 2d (1968), p. 229.

<sup>30</sup>The opinion of the Chancery Court is not officially noted.

Court of Arkansas, the decision was reversed stating that the statute in question was a valid exercise of the state's power to specify the curriculum in the public schools.<sup>31</sup>

### Decision

The Court held that imposing such conditions did violate the First Amendment to the Constitution. A state's undoubted right to prescribe the curriculum for the public schools does not embrace the right to prohibit the teaching of a scientific theory which is based upon reasons that violate the First Amendment.<sup>32</sup> The vagueness of the statute constituted a violation of the Fourteenth Amendment and as such, was held unconstitutional.<sup>33</sup>

### Discussion

The Epperson case was to have far-reaching effects in regard to each state's right to prescribe what was to be taught in the public schools of that state. In prescribing which texts were to be used in the public schools, individuals empowered to adopt textbooks were directed not to select texts which were in violation of the Constitution. Although education was deemed a responsibility of the individual states and localities, rights granted by the Constitution to each individual could not be violated.

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<sup>31</sup>Epperson v. Arkansas, op. cit., p. 228.

<sup>32</sup>Ibid., p. 230.

<sup>33</sup>Ibid., p. 241.

President's Council, District 25 v. Community School Board No. 25

457 F. 2d 289 (Second Cir., 1972)

93 S. Ct. 308 (1972)

Facts

The case in point was on appeal from the United States District Court for the Eastern District of New York. The District Court dismissed the complaint which alleged that the local community's school board resolution requiring the removal of a particular book from the junior high school libraries violated the First Amendment.<sup>34</sup> The local school board had at an executive session on March 31, 1971 voted to remove from all junior high school libraries in the district all copies of Down These Mean Streets by Piri Thomas. At a public meeting on April 19, 1971, the resolution was once again duly approved by a vote of the local school board. However, at a subsequent public meeting on June 2, 1971, a resolution was passed which permitted Down These Mean Streets to be kept at the schools which previously had the book in the libraries and making the book available on a direct loan basis to the parents of children attending the schools.<sup>35</sup>

Decision

The Appeals Court affirmed the lower court's decision in regard to the dismissal of the plaintiff's complaint.<sup>36</sup> The authority granted by the state legislature for the selection of materials in public school libraries was, in the opinion of the Court, not in violation of the First Amendment and that the Court would not be acting appropriately in reviewing

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<sup>34</sup>President's Council, District 25 v. Community School Board No. 25, 457 F. 2d 289 (Second Cir., 1972).

<sup>35</sup>Ibid., p. 290.

<sup>36</sup>Ibid., p. 289.

either the wisdom or efficacy of the determination of the board.<sup>37</sup> The Court cited Epperson v. Arkansas in stating, "By and Large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values."<sup>38</sup>

### Discussion

Basically, the Court left the administration of school activities which are provided for by state statutes to state and local authorities. By not intervening in conflicts which may be described as local problems, the belief that education is not a federal function was reaffirmed. The denial by the United States Supreme Court to take the case on appeal reaffirmed the decision; however, Justice Black gave a strong dissenting opinion.<sup>39</sup>

### Wright v. Houston Independent School District

366 F. Supp. 1208 (S. D. Tex., 1972)

486 F. 2d 137 (Fifth Cir., 1973)

### Facts

The case in point was taken in appeal from the United States District Court, Southern District of Texas.<sup>40</sup> Students brought action to enjoin the Houston Independent School District and the Texas State Board of Education from teaching the theory of evolution as part of the District's academic curriculum and from adopting textbooks presenting

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<sup>37</sup> Ibid.

<sup>38</sup> Epperson v. Arkansas, 393 U. S. 97, 21 L. Ed. 2d 228 (1968), at Ibid., p. 291.

<sup>39</sup> President's Council, District 25 v. Community School Board No. 25, 93 S. Ct. 308 (1972).

<sup>40</sup> Wright v. Houston Independent School District, 366 F. Supp. 1208 (S. D. Tex., 1972).

such theory. The District Court held that the complaint failed to state a claim upon which relief could be granted.<sup>41</sup>

The complaining students alleged that excluding other theories regarding the origin of man inhibited students who could ask to be exempt from such instruction. The teaching of evolution prevented free exercise of religion and as such, constituted the establishment of religion.<sup>42</sup>

### Decision

The Fifth Circuit Court of Appeals affirmed the decision of the lower court. Teaching the theory of evolution did not violate the First Amendment.<sup>43</sup>

### Discussion

The decision expressed the belief that Federal courts cannot by judicial decree prevent the teaching of evolution in public schools for religious reasons. To require the teaching of every theory of human origin would be an unwarranted intrusion into the public school system's authority to control the academic curriculum.<sup>44</sup>

Williams v. Board of Education of County of Kanawha  
388 F. Supp. 93 (S. D. W. Va., 1975)

### Overview

Parental protest over the adoption of certain textbooks and supplementary materials became a volatile issue in Kanawha County, West Virginia. Open resistance and violence

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<sup>41</sup>Ibid.

<sup>42</sup>Ibid.

<sup>43</sup>Wright v. Houston Independent School District, 486 F. 2d 137 (Fifth Cir., 1973).

<sup>44</sup>Ibid., p. 138.

erupted as a result of Kanawha County's Board of Education selection of certain materials which many local citizens considered were not only destructive of the Christian way of life but offensive to any person with even a modicum of moral sensibility.<sup>45</sup>

### Facts

Parents of school-age children brought action against Kanawha County's Board of Education to restrain the Board from allowing the use of certain textbooks and supplementary materials. The plaintiffs stated that the use in the schools of the challenged texts and supplementary materials was a violation of the constitutional rights, particularly the rights of religious freedom and privacy.<sup>46</sup>

### Decision

The District Court ruled that even though some of the controversial textbooks and supplementary materials were offensive to parental beliefs in the choice of language and codes of conduct, the school board's action did not constitute any establishment of religion contrary to First Amendment rights. In placing the materials in the schools, the school board did not constitute an inhibition on or prohibition of the free exercise of religion. In regard to violation of the Ninth Amendment, particularly the right of privacy, the Court ruled that the school board's procedure did not violate any of the rights of the parents and children.<sup>47</sup>

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<sup>45</sup>Clayton L. McNearney, "The Kanawha County Textbook Controversy," Religious Education 70 (September-October 1975): 519.

<sup>46</sup>Williams v. Board of Education of County of Kanawha, 388 F. Supp. 93 (S. D. W. Va., 1975).

<sup>47</sup>Ibid.

## Discussion

In rendering its decision, the Court emphasized that the procedure employed in selecting textbooks must follow stated guidelines. The placing of certain texts and supplementary materials in the schools did not infringe upon rights granted to each individual by the Constitution. Although the contents of some textbooks may be offensive to a particular segment of a school's population, to restrain local boards of education from exercising the granted authority in selecting textbooks was not justifiable.<sup>48</sup>

Daniel v. Waters  
515 F. 2d 485 (Sixth Cir., 1975)  
399 F. Supp. 510 (M. D. Tenn., 1975)

## Facts

The case of Daniel v. Waters centered around a Tennessee statute stating that any textbook expressing an opinion about the origin of man shall be prohibited from use in the public schools unless the book specifically states that the opinion is a theory and is not represented to be scientific fact. The statute also requires that the biblical account of the Creation and other theories of creation be printed at the same time with commensurate attention and equal emphasis.<sup>49</sup>

The case was argued earlier in the United States Appeals Court of the Middle District of Tennessee, Nashville Division, where the Court ruled that the Tennessee statute violated the establishment clause of the First Amendment. The Court held that the statute, insofar as providing equal attention and emphasis be given to other theories of origin of the creation of life in the universe, was patently unreasonable.<sup>50</sup>

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<sup>48</sup>Ibid., p. 94.

<sup>49</sup>Daniel v. Waters, 515 F. 2d 485 (Sixth Cir., 1975).

<sup>50</sup>Daniel v. Waters, 399 F. Supp. 510 (M. D. Tenn., 1975).



### Decision

The United States District Court agreed with the United States Appeals Court's decision and found that the Tennessee statute in question was unconstitutional. The Court emphasized that setting forth the theory as printed in Genesis violates the First Amendment's prohibition on the establishment of religion. Provisions of the Tennessee statute which did not require occult or satanical beliefs of human origin to be printed in biology texts along with other theories of creation gave preferential treatments of particular faiths by state law. This was in violation of the establishment clause of the First Amendment.<sup>51</sup>

### Discussion

The effects of the decision prevented states and legislative bodies from advancing a particular religious belief in the textbooks used in the public schools. Limitations which violated the United States Constitution were not to be thrust upon individuals involved in the textbook selection process.

#### Minarcini v. Strongsville City School District

384 F. Supp. 698 (N. D. Ohio, 1974)

541 F. 2d 577 (Sixth Cir., 1976)

### Overview

The decision reached in this case points to the heart of censorship. The effect will undoubtedly have far-reaching impact on censorship cases of the future. At issue was local boards' of education power to decide which books students may or may not use in regard to freedoms granted to each individual by the Constitution of the United States.

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<sup>51</sup>Daniel v. Waters, 515 F. 2d, op. cit., p. 486.

### Facts

The Strongsville City School Board of Education, disregarding the recommendations of the faculty, refused to approve certain books as texts and ordered removal of the books from the school library. Five high school students, through parents as next friends, brought a class action suit against the members of the Board of Education and the Superintendent of the school district, claiming that the First and Fourteenth Amendment rights were violated.<sup>52</sup>

The case was first heard in the United States District Court for the Northern District of Ohio. The decision rendered found that the defendants had not violated any First or Fourteenth Amendment rights of the complaining high school students.<sup>53</sup> Notice of appeal was issued to the United States Court of Appeals, Sixth Circuit.

### Decision

The Appeals Court ruled that the Board's exercise of curriculum and textbook control was not unconstitutional as prescribed by R. C. Ohio, § 3329.07 which specifically allows or grants to local boards of education the duty of selecting textbooks. The Court ruled that the Board's decision in selecting textbooks was not arbitrary and capricious.<sup>54</sup>

In regard to the school board's removal of books from the library, the Court found such removal was unconstitutional. Removal of the books because the books displeased the school board was found to be in violation of First Amendment rights.<sup>55</sup>

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<sup>52</sup>Minarcini v. Strongsville City School District, 541 F. 2d 577 (Sixth Cir., 1976).

<sup>53</sup>Minarcini v. Strongsville City School District, 384 F. Supp. 698 (N. D. Ohio, 1974).

<sup>54</sup>Minarcini v. Strongsville City School District, 541 F. 2d, op. cit., p. 577.

<sup>55</sup>Ibid.

### Discussion

In rendering its opinion, the Court stated that textbook selection falls within the guidelines of the powers of local boards of education even though the decision made by the Board was not in agreement with the faculty's recommendations. In refusing to select certain texts, the local Board did not offend procedural due process in view of the fact that a Board committee did meet with a faculty committee and a citizens committee to discuss books recommended by the faculty before reaching a decision.<sup>56</sup>

The library of the school was created for the benefit of students. In removal of certain books from the library, each student's First Amendment rights would be violated. Limitations which were related solely to the social or political tastes of school board members could not be placed upon the use of the library.<sup>57</sup>

### State Cases

#### Donahoe v. Richards

61 Am. Dec. 256 (Me., 1854)

### Overview

The separation of church and state in regard to public schools has long been and will continue to be a debated issue in the courts. Selection of textbooks to be used in the public schools, which in some situations has included the Bible, gives rise to legal conflicts involving the separation of church and state. While attempting to support the immunity of public school administration from judicial control, the court in this case had to intervene to settle a textbook dispute.

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<sup>56</sup>Ibid.

<sup>57</sup>Ibid., p. 582.

### Facts

Bridget Donahoe, a student in one of the district schools of Ellsworth, Maine, was required to read from the Bible in school. The local school committee had regularly prescribed the Protestant version of the English Bible to be used as a reading book in the public schools of Ellsworth. Upon refusal to read from the Bible, the child was expelled from school. The father, acting as prochein ami, brought suit against the superintending school committee to recover damages for maliciously, wrongfully, and unjustifiably expelling her from school.<sup>58</sup>

### Decision

The Court ruled that public officers acting in good faith were not liable for erroneous judgment in a matter submitted for determination. In regard to the selection of which textbooks were to be used in the public schools, the authority was to reside with the tribunal as reposed by the legislature, and to require that the Protestant version or any version of the Bible be read in the public schools as merely a reading book was not an interference with religious belief. A pupil cannot be excused from reading in a duly prescribed textbook because of conscientious religious scruples.<sup>59</sup>

### Discussion

The issue in this case was to undergo many changes and revisions. The precedent established that individuals duly empowered by law to select textbooks were beyond judicial control was to remain a basic fundamental right of the various state legislatures. The selection of the Bible as a textbook of literature was held valid.

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<sup>58</sup>Donahoe v. Richards, 61 Am. Dec. 256 (Me., 1854), pp. 256-57.

<sup>59</sup>*Ibid.*, p. 256.

Todd v. Rochester Community Schools  
200 N. W. 2d 90 (Mich., 1972)

Overview

The idea of censorship of textbooks was to include, as was at issue in this case, an attempt to have a book banned because of moral and religious inferences. Using the premise that textbooks which contained or made references to religious matters violated constitutional proscription against the establishment of a religion,<sup>60</sup> the questioning of school authorities' right to select books was to involve the courts once again in the curricular matters of the schools.

Facts

The book in question, Slaughterhouse Five or The Children's Crusade by Kurt Vonnegut, Jr., was being used in a course of instruction referred to as "Current Literature" in a public high school in Rochester, New York. Bruce Livingston Todd, the parent of a student enrolled in the course of instruction, contended that the book violated the First and Fourteenth Amendments to the United States Constitution in matters relating to the establishment of a religion and the rights of individuals thereof.<sup>61</sup>

The Rochester Community Schools contended that the book in question, although maybe incidentally referring to religious matters, does not violate the Constitution. The school district also argued that the selection of books to be used in courses of instruction was within administrative powers and not subject to judicial supervision or review.<sup>62</sup>

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<sup>60</sup>Todd v. Rochester Community Schools, 200 N. W. 2d 90 (Mich., 1972), p. 91.

<sup>61</sup>*Ibid.*

<sup>62</sup>*Ibid.*

### Decision

In rendering the verdict, the Court stated that just because a book contains and makes reference to religious interests, the Constitution is not violated.<sup>63</sup> Determination of a local school's curriculum is the function of the lawfully elected school board, the supervisory personnel, and the teachers.<sup>64</sup>

### Discussion

The case in point was argued on grounds related to religious views. Judge P. J. Bronson was to, however, interject matters related to obscenity upon review of the lower court's decision. In stating the opinion of the Court, Judge Bronson stated that a circuit judge or any governmental official does not lawfully have the right to impose personal value judgments on the citizenry in regard to matters protected by the First Amendment.<sup>65</sup>

The effect of the decision in regard to textbook selection could best be summarized by Judge Bronson as follows.

This Court cannot, in good conscience, nor in adherence to our constitutional oath of office, allow a non-educational public official the right, in absence of gross constitutional transgressions, to regulate the reading material to which our students are exposed. Our Constitution will tolerate no supreme censor nor allow any man to superimpose his judgment on that of others so that the latter are denied the freedom to decide and choose for themselves.<sup>66</sup>

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<sup>63</sup>Ibid., p. 93.

<sup>64</sup>Ibid., p. 99.

<sup>65</sup>Ibid., p. 97.

<sup>66</sup>Ibid., p. 98.

Carroll v. Lucas  
313 N. E. 2d 864 (Ohio, 1974)

Overview

A liability claim was at issue in this case. Alleged damages received by a student upon reading a book assigned by a teacher was the basis for this court action.

Facts

Joyce Elizabeth Carroll was assigned to read Trips: Rock Life in the Sixties by Ellen Sander as part of the course material in an eighth-grade music class at Princeton Junior High School in Princeton, Ohio. The plaintiff contended that in reading the book, Ms. Carroll was exposed to undesirable social influences, vulgarity, and related promiscuous practices which were not related to any technical or “artistic” aspects of music instruction. The complaint alleged injury from negligence and sought compensation from local school officials.<sup>67</sup>

Decision

The Court decided that while the school officials may be liable for malicious or deliberate injury to students, they are not liable for torts committed in the performance of and within the scope of those duties involving the exercise of judgment and discretion. It was not the duty of the Court to interfere with the daily operation of the school but rather with the function of public school officials, both elected and appointed, who are made responsible and accountable by law.<sup>68</sup>

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<sup>67</sup>Carroll v. Lucas, 313 N. E. 2d 864 (Ohio, 1974), pp. 866-67.

<sup>68</sup>Ibid., pp. 867-68.

## Discussion

In denying the claim, the Court claimed that selection of textbooks was a judgment which, unless willfully and maliciously causing personal injury, was above monetary reward for damages. Textbook selection involved judgment and discretion; and as such, school officials in performing duly prescribed duties were not liable for tort claims.

## SELECTED COURT CASES REGARDING THE TREATMENT OF MINORITIES IN TEXTBOOKS

### Federal Case

#### Loewen v. Turnipseed

C. A. No. GS75-147-S (N. D. Miss., 1976)

## Overview

Although the case in question has yet to be settled, the legal ramifications should have far-reaching effects in the textbook selection process. The case in point deals with the treatment of minorities in textbooks and the exclusion of minorities as a segment of the history of a state's people. The decision, which is expected in the latter part of 1978, will possibly dictate the legality of textbooks which some have construed as "flagrantly discriminatory."<sup>69</sup>

## Facts

The plaintiffs contend that the State Textbook Purchasing Board of Mississippi violated the rights assured and protected by the United States Constitution as follows.

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<sup>69</sup>John Anthony Scott, "History Textbook Adoption Procedure Challenged in Mississippi," Inequality in Education 22 (July 1977): 130.



Defendants' failure to adopt and implement regulations establishing hearing procedures through which publishers, authors, educators and parents of school age children can advance arguments in favor of and in opposition to textbooks submitted for appraisal, their failure to adopt and implement regulations requiring that all appraisals – favorable and unfavorable – be in writing and freely available, and their policy of accepting Mississippi history textbooks for appraisal and adoption at intervals of no less than six years, violate plaintiffs' rights assured and protected by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States and 42 U. S. C. § 1983.

Defendants' policy and practice of recommending and adopting only those history textbooks which espouse notions of "white supremacy," and/or which minimize the role of blacks in the history of Mississippi, and their refusal to recommend and adopt Mississippi: Conflict and Change, because that text questions notions of "white supremacy," and records the role of all Mississippians, black and white, in the State's history, violates plaintiffs' rights assured and protected by the Thirteenth Amendment and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and 42 U. S. C. §§ 1981 and 1983.

Defendants' refusal to approve for use in Mississippi public schools Mississippi: Conflict and Change, violates the right of plaintiff school age children to a fully non-discriminatory public school system assured and protected by the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and 42 U. S. C. § 1983.

Defendants' censor of – their failure to adopt and approve – Mississippi: Conflict and Change, and their adoption of only one textbook for use in Mississippi History courses, violates the rights of all plaintiffs protected by the First and Fourteenth Amendments to the Constitution of the United States and 42 U. S. C. § 1983.<sup>70</sup>

### Decision

*To be rendered.*

### Discussion

This case presents unique and complex legal questions. Courts, for the most part, have refrained from evaluating the content of a textbook. No court to date has rendered

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<sup>70</sup>Loewen v. Turnipseed, C. A. No. GC75-147-S (N. D. Miss., 1976).

a verdict in favor of the plaintiffs on such a claim.<sup>71</sup> If, in fact, the Court does declare the selection of the history text mentioned in this case in violation of the Constitution, the legal ramifications will assuredly effect the textbook selection process in all parts of the United States. The possibility of appeal is present; therefore, a definite trend will only be established upon completion of litigation.

### State Case

#### Rosenberg v. Board of Education of City of New York 92 N. Y. S. 2d 344 (1949)

### Overview

This case represented an attempt to invoke censorship of materials because of alleged racial overtones. Academic freedom and the right of school officials to decide what was desirable as teaching tools to further the education of youngsters were at issue.

### Facts

The plaintiffs in this case, Murray B. Rosenberg and others, brought suit against the Board of Education of the City of New York for permitting the said Board to allow certain books to be read and studied in the public and secondary schools. The books in question, Oliver Twist by Charles Dickens and The Merchant of Venice by William Shakespeare, were objectionable according to the plaintiffs because of tendencies to engender hatred of the Jewish people as individuals and as a race and that the defendants approved the books because of antireligious or antiracial inclinations.<sup>72</sup>

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<sup>71</sup>Scott, op. cit., p. 131.

<sup>72</sup>Rosenberg v. Board of Education of City of New York, 92 N. Y. S. 2d 344 (1949), pp. 344-45.

The defendants claimed that in selecting the two books along with others the duties were exercised pursuant to state statute, and the textbooks selected were regarded as preferable for the instruction of pupils in English and English literature. The defendants also contended that the teachers had been expressly required to explain to pupils that characters described therein were not typical of any nation or race, including persons of the Jewish faith and were not intended to reflect discredit on any race or national groups.<sup>73</sup>

### Decision

The Court ruled that except where a book has been maliciously written for the apparent purpose of promoting and fomenting a bigoted and intolerant hatred against a particular racial or religious group, public interest does not warrant or encourage the suppression of any such book.<sup>74</sup>

In issuing the decision of the Court, the Honorable Justice DiGiovanna stated:

Public education and instruction in the home will remove religious and racial intolerance more effectively than censorship and suppression of literary works which have been accepted as works of art and which are not per se propaganda against or for any race, religion or group. Removal from schools of these books will contribute nothing toward the diminution of anti-religious feeling; as a matter of fact, removal may lead to misguided reading and unwarranted inferences by the unguided pupil.<sup>75</sup>

The Board in exercising its duly authorized power did not abuse its discretion in selecting the two textbooks in question. This discretion must not be interfered with in the absence of proof of actual malevolent intent.<sup>76</sup>

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<sup>73</sup>Ibid., pp. 345-46.

<sup>74</sup>Ibid., p. 346.

<sup>75</sup>Ibid.

<sup>76</sup>Ibid.

### Discussion

The effect of this case was to set a legal precedent for future cases relating to the censorship of textbooks. Having duly left the matter of academic affairs with the schools, the Court as such absolved itself from administrative and curricular matters and allowed states and local communities to continue to decide what was desirable for use by teachers in the classroom.

## SELECTED COURT CASES REGARDING THE TEXTBOOK SELECTION PROCESS

### Federal Cases

Iverson v. Board of School Commissioners  
39 F. 735 (D. Ind., 1889)

### Facts

Iverson, Blakeman, Taylor, and Company had been contracted by the Indianapolis Board of School Commissioners pursuant to statutes set forth by the State of Indiana to supply certain textbooks to be used in the schools of Indianapolis. The publishers claimed exclusive rights to furnish the said texts for a period of six years. The Board of City School Commissioners later decided to change the adopted texts pursuant to an act of the legislature of Indiana. The plaintiffs sought an injunction to enjoin the Board of Commissioners from making such new adoptions.<sup>77</sup>

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<sup>77</sup>Iverson v. Board of School Commissioners, 39 F. 735 (D. Ind., 1889).

### Decision

The Court stated that the Commissioners were only impelled to select textbooks as provided for by statutes in effect at the time of adoption. The six-year period was for county boards of education in Indiana and not for city boards. As long as the Board of School Commissioners adhered to the legal requirements of textbook adoption, the Court had no right to intercede. Change of textbooks could occur in this case by a unanimous vote of the county board of education, a two-thirds vote of the city school commissioners, or at a specified date defined by the state statutes for city school districts. The Court held that there existed no right to issue a restraining order for the publishers.<sup>78</sup>

### Discussion

The precedent established by this case in the textbook selection process impelled individuals charged with the responsibility of contracting for textbooks to follow legal requirements. Although the case in point did show that a violation of state law on the part of school officials had been committed, the belief that school officials were duly obliged to observe regulations set forth by statutory provisions was made clear.

MacMillan Company v. Johnson  
269 F. 28 (E. D. Mich., 1920)

### Facts

Pursuant to the school textbook law of the State of Michigan, local boards of education and school officials were impelled to select only textbooks that were listed with the State Superintendent of Public Instruction.<sup>79</sup> MacMillan Company filed a complaint with

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<sup>78</sup>Ibid., pp. 737-38.

<sup>79</sup>MacMillan Company v. Johnson, 269 F. 28 (E. D. Mich., 1920).

the District Court that the provisions of the statute were unconstitutional on the following grounds.

1. That the statute prevents plaintiff from selling in, or shipping to, Michigan its schoolbooks except at prices which would cause it such tremendous loss that it would not undertake to do so, and that therefore the enforcement of such act would deprive plaintiff of its property without due process of law, in contravention of the Fourteenth Amendment;

2. That the act attempts to regulate interstate commerce by regulating the prices of books shipped into Michigan in such commerce, and is for that reason unconstitutional; and

3. That the statute discriminates in favor of dealers in schoolbooks for use in the public schools of Michigan against various other dealers in books, and that therefore it denies plaintiff the equal protection of the laws.<sup>80</sup>

### Decision

In rendering the decision, the Court upheld the provisions of the state statute in limiting the purchasing of textbooks by local districts to the list supplied by the State Superintendent of Public Instruction. However, the Court did not refrain the publisher from selling textbooks on the state-adopted list to the general public at the stated price as provided for within the provision.<sup>81</sup>

### Discussion

In upholding the power of the state legislature to decide which textbooks were to be used in the schools of that state, the Court clearly gave each state the right to select textbooks. Although the particulars of this case were financial in nature, the questions of limiting school districts to using only textbooks adopted by the state was made clear. Later contentions were to be based upon the precedent established by this case.

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<sup>80</sup>Ibid., p. 30.

<sup>81</sup>Ibid., pp. 31-32.

Charles Scribner's Sons v. Board of Education  
278 F. 366 (Seventh Cir., 1921 )

Facts

Charles Scribner's Sons had duly contracted to offer textbooks to the schools of the State of Illinois pursuant to the textbook law of the State. Once having been placed on the official multiple adoption list of textbooks for the schools of the State, the publisher sought not to have the contract limited to the agreed price. The Board of Education of Cook County held that once the publisher had agreed to the contract, prices could only be raised pursuant to the declarations of the state statute. The publisher sent notification to the State Superintendent of Public Instruction of unwillingness to accept or comply with the requirements of any further adoptions.<sup>82</sup>

The case was first heard in the Eastern Division of the Northern District of Illinois. The lower court denied the complaint of the publisher whereas Charles Scribner's Sons took the case to the Seventh Circuit Court of Appeals.<sup>83</sup>

Decision

The Appeals Court denied the appeal and affirmed the decision of the District Court.<sup>84</sup> In rendering the decision, the Court stated that the contention that the publisher could not provide the adopted textbook because of increased cost to publish was not subject to the constitutional objections of due process as was raised by the publishers.<sup>85</sup>

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<sup>82</sup>Charles Scribner's Sons v. Board of Education, 278 F. 366 (Seventh Cir., 1921), p. 367.

<sup>83</sup>*Ibid.*

<sup>84</sup>*Ibid.*

<sup>85</sup>*Ibid.*, pp. 368-69.

The Court also stated that the publisher did have the right to withdraw books and prices before acceptance; however, after adoption by school districts, the contract was valid pursuant to the conditions of the textbook law. Charles Scribner's Sons were duly obliged to supply the books as adopted during the statutory period.<sup>86</sup>

### Discussion

This case was to set a legal precedent in regard to publishers complying with state statutes concerning textbook adoptions. Once the publishers had agreed to the terms of adoption and the offer had been accepted by individuals empowered to select textbooks, the publisher was obliged to supply the adopted texts. The decision upheld state and local districts' rights to contract for textbooks and impelled publishers to furnish textbooks as agreed upon.

### Funk and Wagnalls Company v. American Book Company 18 F. 2d 739 (Second Cir., 1927)

### Facts

Within the State of Kentucky, the State Textbook Commission was empowered by governing statute to adopt basal books to be used in the public schools of that state.<sup>87</sup> The statute also stated that local districts would use basal texts adopted by the Commission. The Commission was only empowered to recommend supplementary texts, and the adoption of such was left to the discretion of local school districts. Funk and Wagnalls Company sought an injunction restraining the American Book Company from practicing unfair competition in declaring that the recommendation of a dictionary was not equivalent to

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<sup>86</sup>Ibid., pp. 369-70.

<sup>87</sup>Funk and Wagnalls Company v. American Book Company, 18 F. 2d 739 (Second Cir., 1927).



the adoption of a basal book as was supposed by a list furnished by the American Book Company to county superintendents. The American Book Company contended that the dictionary had been officially adopted as one of the textbooks in the uniform series of textbooks adopted pursuant to the common school laws of Kentucky.<sup>88</sup>

#### Decision

The Second Circuit Court of Appeals modified the decree issued by the Southern District Court of the State of New York.<sup>89</sup> The Appeals Court stated that the Kentucky State Textbook Commission had no right to prescribe supplemental books to be used with state-adopted basal texts. The publisher or publishers of dictionaries not named by the Commission as one of the recommended books were entitled to sell dictionaries to the public or schools of Kentucky by any fair means.<sup>90</sup>

#### Discussion

The question of whether dictionaries were textbooks was answered in this decision. Although dictionaries can be used as basal texts, unless the dictionary is prescribed as such, dictionaries should be considered as supplementary books and should not be categorized as a basal text.

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<sup>88</sup>Ibid., p. 740.

<sup>89</sup>Ibid., p. 743.

<sup>90</sup>Ibid., p. 739.

State CasesPeople ex rel. Bellmer v. State Board of Education

49 Cal. 684 (1875)

Overview

The changing of textbooks used by the public schools was to be an often-litigated issue. The case in point was one of the first to deal with such matters.

Facts

The case on appeal from the District Court, Sixth Judicial District, County of Sacramento, California, involved an alleged improper change of textbooks in the State of California. The State Board of Education had directed the readoption after only four years. This was in violation of a state statute which called for the readoption of textbooks after five years of use. Also in question were improper board actions in failing to give proper notice of proposed changes as provided for by statutory decree.<sup>91</sup>

Decision

The Court ruled that the readoption of textbooks for use in the public schools was to follow state statutes pursuant to textbook selection. Also, rules and regulations were to be adhered to by all individuals, collectively and singularly, involved in the textbook selection process.<sup>92</sup>

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<sup>91</sup>People ex rel. Bellmer v. State Board of Education, 49 Cal. 658 (1875).

<sup>92</sup>Ibid.

### Discussion

As was established in this case, statutory provisions were to be followed in the orderly selection of school books. Consistency on the part of the courts was to mark litigations that were to evolve involving readoption of texts.

#### State ex rel. Flowers v. Board of Education of City of Columbus 35 Ohio 368 (1880)

### Overview

At issue in this case were the rights and restrictions placed upon governing bodies charged with the duties of selecting textbooks. The actions of the body in this situation were bound by legislative enactments and not beyond legislative control.

### Facts

Within the City of Columbus, Ohio, the district school committee had ordered a gradual change of textbooks in geography. Gradual change was so ordered to ease the financial burden of the parents. No more versions of the old adopted text were to be purchased; instead, the newly-adopted text was to be bought. The change was outside of the required three-year period of use and was by a simple majority of the board. The plaintiff's contention was that the new adoption was void. The old geography text superseded the new adoption and that in order for a change to be forthcoming, three-fourths of the school committee must vote to reconsider pursuant to the state statute regarding the change of textbooks.<sup>93</sup>

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<sup>93</sup>State ex rel. Flowers v. Board of Education of City of Columbus, 35 Ohio 368 (1880), p. 370.

### Decision

The Court decided that the local committee did act within limitation in adopting the new text. Since the change was after the three-year period, a simple majority was all that was needed. In regard to using old texts, the new geography text adopted was the official adoption of the board even though the old series was still in use.<sup>94</sup>

### Discussion

The precedent established by this case was the necessity of agencies vested with the authority to select textbooks to adhere to the statutory limitations placed upon such agencies. Even though no violations were apparent in this case, the ruling would affect future litigations involving improper actions by textbook selection bodies.

Campana v. Calderhead  
44 P. 83 (Mont., 1896)

### Overview

At issue in this case was deciding what individuals would have the authority to select textbooks in the absence of statutory requirements. The case was to serve as a precedent for future litigations in which the authority to prescribe textbooks was not legally defined.

### Facts

The plaintiff, a taxpayer of Silver Bow County, Montana, contended that the Board of Trustees of School District No. 1 had adopted certain textbooks different from books used the preceeding six years. By adopting said books, the Board of Trustees had violated state statutes dealing with textbook selection. The Board of Trustees responded that prior

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<sup>94</sup>Ibid., p. 369.

to adoption of the newly-acquired texts, the function of textbook selection was with the state. However, pursuant to stipulations of state statutes, the authority to select textbooks by a state agency had ended. Therefore, textbook selection was at the discretion of the local school district.<sup>95</sup>

### Decision

The Court ruled that although the power to select textbooks was granted to the legislature by the state constitution, the legislature had not specified for the period in question as to what individuals should select textbooks to be used in the public schools. Since the local board of trustees was empowered to govern the public schools of the respective districts, not inconsistent with state laws or rules imposed by the State Superintendent of Public Instruction, the authority to select textbooks was dutifully with the trustees.<sup>96</sup>

### Discussion

In issuing the decree, the Court placed the responsibility of textbook selection with local boards of education in lieu of the absence of state statute. The act was, in essence, making textbook selection a local function upon state devoidance of the authority.

Rand, McNally and Company v. Royal  
78 P. 1103 (Wash., 1904)

### Facts

A publishing company brought suit against the Board of Directors of School District No. 1 of Thurston County, Washington, claiming that certain textbooks that were

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<sup>95</sup>Campana v. Calderhead, 44 P. 83 (Mont., 1896), pp. 83-84.

<sup>96</sup>Ibid., p. 84.

duly adopted by the Washington State Board of Education were not in use in the public schools of the school district in question. Also at issue was a prescribed course of study of the State Board which the plaintiff stated was not being followed by the district as well. Rand, McNally and Company sought to have the school directors follow that state course of study and use the textbooks that were duly adopted by the State Board.<sup>97</sup>

### Decision

Upon examining all the evidence, the Court ruled that part of the plaintiff's contentions were valid. Several classes were not using the state-adopted text. A directive was issued by the Court to require the textbooks to be used in the grades in question.<sup>98</sup>

In regard to violations of the state course of study, the Court ruled that the local district's policy of having students purchase selected textbooks and become "proficient therein" did not deviate from the state's course of study.<sup>99</sup>

### Discussion

The Court, in the decision, established that once textbooks are selected for a particular grade or subject, the texts are to be assigned for use. Complete omission of an adopted text was considered a violation of the textbook law.

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<sup>97</sup>Rand, McNally and Company v. Royal, 78 P. 1103 (Wash., 1904), p. 1104.

<sup>98</sup>Ibid., pp. 1105-06.

<sup>99</sup>Ibid., p. 1105.

State ex rel. Moore v. Millsap  
108 S. W. 1133 (Mo., 1908)

Overview

The issue involved in this case was concerned with what individuals should have the authority to select textbooks when both the state and the local school district have failed to exercise power in regard to such matters. The decision rendered was to affect other litigations with similar issues involved.

Facts

J. S. Millsap was employed as a teacher in School District No. 1 of Cooper County, Missouri. With the repeal of Missouri statutes creating a School Book Commissioner, the power to determine which textbooks were to be used in the public schools then became a function of the local school districts. The school directors in this instance had failed to select textbooks for use in the school district, whereupon Millsap decided which texts were to be used in class. J. T. Moore and a group of parents objected to a certain text prescribed by Millsap and through court action asked that the children be taught from another book.<sup>100</sup>

Decision

The Court ruled that the teacher rather than the parent was so vested with the authority to prescribe which textbooks were to be used in the classroom in the absence of state statutes which granted the authority to any individual or tribunal and the failure of local school committees from performing said authority. The Court held that to require

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<sup>100</sup>State ex rel. Moore v. Millsap, 108 S. W. 1133 (Mo., 2908), pp. 1133-34.

the teacher to offer instruction as to the desires of individual patrons of the class would impose a burden on the teacher which could not be overcome.<sup>101</sup>

### Discussion

The decision defined who shall have the authority to select textbooks in the absence of legislative or administrative enactments. By citing the teacher as having this authority, the Court clearly reiterated that parental control of internal matters of instruction must be made through statutorially defined bodies.

State ex rel. Simon v. Fairchild  
125 P. 40 (Kan., 1912)

### Overview

The words uniform series of textbooks were at issue in this case. The Court was to define what was implied in state statutes that called for the uniform adoption of textbooks for use in the public schools.

### Facts

E. R. Simon, the county attorney of Shawnee County, Kansas, sought to have the State Textbook Commission of Kansas reconvene to let contracts for readers and geographies that were “uniform” in context. The State Textbook Commission had adopted textbooks in both subject areas that were different for differing grade levels or “split” series. The question before the Court was that in effect did the Commission adopt texts that were not “uniform.”<sup>102</sup>

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<sup>101</sup>Ibid., p. 1134.

<sup>102</sup>State ex rel. Simon v. Fairchild, 125 P. 40 (Kan., 1912), p. 41.



## Decision

In rendering the decision, the Court stated that the legislature gave to the Commission full power and authority in the judgment of which textbooks should be used in the public schools of the state. The words uniform series were to imply that all books used in a particular grade level were to be the same in all schools of the state. The Commission is expressly given the right to adopt part of the books on any subject written by one author and reject books by the same author on the same subject. The question as to whether the books by different authors upon the same subject are so arranged as to permit use connectedly is to be answered by the State Textbook Commission and not by the courts.<sup>103</sup>

## Discussion

The decision allowed individuals empowered with the authority to select textbooks to decide what was uniform so long as all of the textbooks in use in the schools of the state in question were the same. The verdict was to clarify for future litigations what was to be considered a uniform series of textbook adoptions.

Griggs v. Board of Education of Atlanta  
90 S. E. 48 (Ga., 1916)

## Facts

At issue in this case was the failure of the Board of Education of Atlanta, Georgia to adopt textbooks after the normal five-year period of adoption. The plaintiff contended that by the failure of the Board to act upon new adoptions, the textbooks in use for the preceding five years were readopted and could not be changed until the next date for

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<sup>103</sup>Ibid., p. 42.

adoption which was five years hence. After one year of the five-year period of adoption, the defendant did select textbooks differing from past adoptions to be used in the public schools of Atlanta for the remaining four years.<sup>104</sup>

### Decision

The Court ruled that failure on the part of the Board to act after the five-year period did not constitute a readoption of the same textbooks. The action of the Board to select texts for the remaining four years was unlawful since state statutes provide for a five-year period of adoption rather than four.<sup>105</sup>

### Discussion

The failure of an agency empowered to select textbooks does not constitute a readoption. The precedent established by this case was to clarify in future court cases questions concerning the length of time between textbook adoptions and which texts were actually adopted.

School District of Borough of Ferndale, Cambria County v.  
School District of Conemaugh Township, Somerset County  
191 A. 611 (Penn., 1937)

### Facts

The case in point was action by the School District of Conemaugh Township, Somerset County, Pennsylvania to compel the School District of the Borough of Ferndale, Cambria County, Pennsylvania to pay for added cost of using books which must be studied to complete textbook work. The School District of Conemaugh, not having a high school,

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<sup>104</sup>Griggs v. Board of Education of Atlanta, 90 S. E. 49 (Ga., 1916).

<sup>105</sup>Ibid.

sent pupils to the high school in the Ferndale School District at costs which were determined as follows.

- (1) Instruction, including salaries of members of the teaching staff, and attendance of teachers in institutes;
- (2) textbooks and school supplies; and
- (3) fuel, light, water, and janitor service; and shall also include ten per centum (10%) of the total cost of said items.<sup>106</sup>

The Ferndale School District claimed the cost was to include all the books used by the students and not restricted to textbooks directly prescribed by course instruction. The School District of Conemaugh disagreed.<sup>107</sup>

### Decision

The Court ruled that textbooks are not restricted to books studied by students in the school room. Included as well were books which must be studied in order to complete assignments that are textbook-related. In computing the cost of tuition, the books used by the class must also be included.<sup>108</sup>

### Discussion

In rendering the decision, the Court defined “textbooks” as books used by the class. To construe the meaning of textbooks to just a single series would vastly underrate what the term textbook encompasses.

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<sup>106</sup>School District of Borough of Ferndale, Cambria County v. School District of Conemaugh Township, Somerset County, 191 A. 611 (Penn., 1937), p. 612.

<sup>107</sup>Ibid.

<sup>108</sup>Ibid.

## SUMMARY

Historically, most of the court cases in regard to textbook selection that were tried in the late 1800's and early 1900's were state cases. The trend was reversed in the mid-1900's with a considerable increase in the number of Federal judicial proceedings that dealt with textbook adoptions. According to Dr. Joseph Bryson, the reluctance of the Federal courts to intervene in matters that relate to state statutory powers in recent decisions could cause the various state court systems to once again become more actively involved in the legal aspects of textbook selection.<sup>109</sup>

In reviewing court decisions related to textbook selection, one must be conscious of the fact that textbook adoption is basically a state and local function. In almost all cases relating to textbook selection, the courts have reiterated this fact. The idea established by the founders of our country that education is a state and local affair was to continue into the present. The courts, for the most part, have upheld that belief and have based the bulk of court decisions upon that premise.

Another point of conjecture for the observer would be the breadth of the textbook selection process. As noted by Fulbright and Bolmeier, while the American schools of earlier days were characterized by a lack of materials, the public schools of today have a wide and varied assortment of teaching tools readily available to the classroom teacher.<sup>110</sup> Textbooks have become more complex with a wider range of functions. The textbook selection process of today is indicative of this complexity, and the legal ramifications tend to support this intricacy.

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<sup>109</sup>Personal conversation with Dr. Joseph Bryson, School of Education, University of North Carolina at Greensboro, Greensboro, North Carolina, 8 June 1978.

<sup>110</sup>Fulbright and Bolmeier, op. cit., p. 135.

## Chapter V

### SUMMARY, CONCLUSIONS, AND FUTURE TRENDS IN TEXTBOOK SELECTION

The design of this study was to provide a guide for use by four groups associated with education. As stated in the Introduction, the textbook selection process directly affects administrators, teachers, parents, and students. By providing a reference source of information pertaining to the legal aspects of textbook selection, the aforementioned groups can readily surmise public concerns with textbook selection, the legal bases employed in the selection process, and the legal ramifications involved in the adoptive procedures of instructional materials.

No definite conclusions were to be drawn as a result of this research. The presentation of the facts alone allows the individual reader to ascertain the particular implications as related to the schooling process. Since textbooks are so vital to the task of educating youngsters, the methods and procedures employed in the selection process are of paramount importance.

In reviewing the research presented in this study, the reader should be able to draw basic concluding guidelines that relate to individual schools, school districts, states, and the nation in textbook selection procedures. Since education has been deemed a state and local function, differences of procedures in the adoptive processes quite naturally follow. The context of statutory provisions and litigated challenges support this contention of diversification and, as such, portray the American system of education as being aware of other institutions of learning while retaining a sense of uniqueness.

As a guide for educational and legal research, several questions were formulated and listed in the introductory chapter of this study. While the review of the literature involves

both the educational and judicial issues associated with the textbook selection process, most of the questions were to be answered in reviewing the statutory provisions for textbook selection and judicial decisions related to textbook adoption procedures. The answers to these questions comprise the major portion of a set of legal guidelines which school administrators, teachers, parents, and students can use in determining the implications of textbook selection in individual situations.

As was stated in Chapter II, Review of Related Literature, to cover each and every concern that has been promulgated concerning the selection of textbooks would have been virtually impossible. Therefore, the effort was confined to areas pertinent to the legal aspects of textbook adoption and possible public interests that, in due time, could invoke court action. No inferences were drawn from the Review, and the materials were presented face-value as related to the topic.

In general, the Review of Related Literature conveys the following information.

1. There is much public concern relevant to the adoption and selection of textbooks, especially in certain areas.
2. The basic power to select textbooks resides with the legislature of each state.
3. Legislatures have responded to the duty of textbook selection by:
  - a. Establishing provisions that allow for a state-wide system of textbook selection,
  - b. Making textbook adoption a function of local school districts, and
  - c. Allowing for a combination of state and local responsibility in the textbook selection process.
4. Censorship involves many issues and is not confined to any particular area.
5. The desire to limit information available to students has been initiated by both school officials and the public.

6. The treatment of ethnic minorities and women in textbooks is an area of increasing public concern.
7. Textbooks of high quality have high standards in curriculum areas and display all segments of the American society in proper context.
8. Methods and procedures used to select textbooks by states and local districts are marked by both similarities and differences.
9. With the increasing number of instructional materials available, there is a definite need for selection criteria.
10. The ultimate goal of textbook adoption is to enhance the educational benefits available to each child.

The Review supported the contention that textbook selection is a complex and diversified enterprise. The possibility of litigation hinges upon public concerns which are manifested in future confrontations between individuals and groups.

As stated previously, the questions posed in Chapter I were to be answered in Chapters III and IV. The first question in Chapter I required identification of each state's provisions in regard to textbook selection as defined by the state's constitution and governing statutes. Chapter III listed the procedures employed to select textbooks by the 50 states and the District of Columbia as defined by statutory decree. All of the states and the District of Columbia have a plan of adoption as prescribed by state law.

The second question in the introductory chapter dealt with the legal implications of textbook selection as defined by the constitution and governing statutes of each state. A review of the 50 states and the District of Columbia produced the following results.

1. Six states make specific reference as to the methodology to be employed in the selection process and specify same in the state constitutions.

2. In 24 of the states, the authority to enact rules and regulations concerning the adoption of textbooks is given either to the state board of education, some type of textbook commission, or the department of education.
3. Two states authorize state agencies to prescribe one book for each subject. Local authorities are then obliged to use the prescribed textbook.
4. Fourteen states have specific statutes which authorize state agencies to adopt multiple lists of approved textbooks from which local authorities are allowed to choose books for use in the public schools of that particular district.
5. In 15 of the states, a combination of both state and local initiative is defined by governing statutes.
6. Textbook publishers are required in seven states to register with a state agency or commission. Local school districts are then compelled to select and purchase textbooks only from the list of registered publishers.
7. Nineteen states authorize local school districts to select textbooks at the discretion of the local school officials.
8. Limitations are placed upon individuals involved in the textbook selection process as to acting as textbook agents, accepting gifts and/or monetary rewards, and other prescribed unlawful acts in 19 of the states.
9. Three states have specific statutes which establish policy for the separation of church and state.
10. Five states forbid the adoption of textbooks that discriminate because of sex, race, color, creed, or natural origin.
11. Eight states require, by statute, specific instruction in certain areas in the textbooks used in the public schools of those states.



12. Three states allow for exemption from uniform textbook requirements pursuant to statutory decree.

The next question posed in the introductory chapter considered legal decisions rendered by Federal and state courts relevant to textbook selection. Chapter IV listed selected court cases and the decisions which evolved regarding textbook adoption. The cases were grouped into four categories to illustrate the following legal issues.

1. Textbook selection and the law,
2. Censorship and textbooks,
3. The treatment of minorities in textbooks, and
4. The textbook selection process.

Within each group, the cases were listed in chronological order to reflect the attitudinal change of the public over the years. Selection of cases was derived from the earliest decision involving the legal aspects of textbook selection. This procedure was adopted to alleviate possible repetition of cases that involved similar issues and questions. The cases that were presented in Chapter IV represent how the courts have been involved in the textbook selection process to arrive at the legal bases which now exist.

The fourth question in Chapter I asked for an examination of legal interpretations of court decisions in regard to the textbook selection process. When confronted with issues pertaining to textbook selection, the courts have consistently held that education is a function of state and local authorities, with due respect to the United States Constitution and various state constitutions. Basic conclusions of the selected cases are analyzed as follows.

1. The power to select textbooks is a function of the state legislature and is either expressed or implied in the governing statutes of that state.

2. The method of adoption as prescribed by governing statutes must be followed by the individuals charged with the responsibility of selecting textbooks.
3. In the absence of specific requirements on the state level, textbook selection is a function of local school districts. Upon failure of the local school district officials to perform, the authority for textbook selection resides with the teacher.
4. In those states with specific time periods limiting re-adoption, adopting officials are to follow governing statutes.
5. Uniformity of textbooks is defined by the court as the use of textbooks by all students in a particular grade level or subject area in all of the schools.
6. The Bible may be used as a textbook so long as it is not used to promote a religious purpose.
7. Contracts entered into by school officials and publishers are binding pursuant to specified statutory guidelines.
8. School districts and teachers are compelled to use textbooks that have been legally adopted.
9. State statutes relating to unlawful acts committed by adopting officials or attempts by individuals with personal interests in the selection of certain texts to influence the judgment of adopting officials are enforceable and punishable by law.
10. School officials are not liable for actions of a judgmental nature in textbook selection.
11. Textbooks that advance the teaching of evolution are not unconstitutional; statutes which forbid the use of textbooks that teach evolution are unconstitutional.

12. The selection of textbooks and censorship are local concerns so long as the constitutional rights of individual citizens are not jeopardized.

13. Textbook selection meetings are subject to open meeting laws provided the selection committee does have the power to act for the state.

As stated earlier, courts are reluctant to become involved in the day-to-day operations of the public schools. Unless groups or individuals involved in the textbook selection process can demonstrate that constitutional rights have been violated, the courts have refused to respond. Education has remained a function of state and local officials.

The final question to be answered in this research dealt with trends or future directions of the textbook selection process based upon court decisions. As alluded to in the overview of Chapter IV, drawing specific conclusions and generalizations are most difficult in legal research. There is difficulty in determining in advance what a court will state as being educationally sound and legally correct. This inconsistency is based upon the individual particulars of a case and different interpretations of the law by court officials. However, it is safe to assume that decisions that have set certain standards or precedents will continue to be held in high regard by learned judges.

In reviewing the decisions presented in this research, the decisions tended to follow these patterns.

1. Textbook selection is a function of the states and of the respective legislatures.

Unless a specific provision of the constitution is violated, state statutes regarding textbook selection are anonymous to judicial interference.

2. Censorship of textbooks is an issue of local concern which the Supreme Court feels should be decided locally as was demonstrated by the refusal of that body to hear further arguments in President's Council, District 25 v. Community School Board No. 25, 457 F. 2d 289 (Second Cir., 1972), 93 S. Ct. 308 (1972).

3. The general trend has been for more Federal, rather than state, court involvement in textbook selection issues; but as pointed out previously by a noted school law expert, this trend could possibly be reversed. The Federal courts have become increasingly reluctant to intervene in the daily operation of the public schools. Therefore, complainants will probably seek relief in the state court system.
4. Another possibility is that the courts are going to become more involved in cases related to the treatment of minorities as illustrated in the pending case in Louisiana of Loewen v. Turnipseed, C. A. No. GS75-147-S (N. D. Miss., 1976). Public interests seem to be rapidly surfacing in regard to how ethnic minorities and women are being represented in textbooks. Although considerable progress is evident, many individuals believe that changes are too slow in coming; and only through court intervention can equal treatment of these individuals in textbooks in fact become a reality.

The aforementioned trends and possible future directions are based upon interpretations of court cases and are not to be implied as steadfast and conclusive. What is held as constitutional today may in the future be reversed by other courts. The tendency is, however, present; only time will determine the authenticity of these trends.

In conclusion, education and the selection of textbooks used to further the enlightenment of youngsters are functions of the individual states and local communities. Laws pertaining to textbooks have been enacted to benefit children in the schooling process. Censorship of textbooks is a local issue to be resolved by each locale on grounds that are respective of individual rights granted to all by the United States Constitution. The proper treatment of minorities in textbooks is a future concern with which the courts and the

educational community will ultimately have to deal. Textbook selection procedure will continue to be a debated issue that will necessitate revisions of state statutes and new interpretations of the law by the courts.

### Concluding Statement

In the textbook selection process, the possibility of judicial review is ever-present. The governing statutes of some states define specifically how textbooks are to be selected while others rely upon the implied powers of state agencies and local boards of education in determining how textbooks are to be adopted. Perhaps this conjecture of inconsistency has promoted judicial review and court interpretations.

Undoubtedly, laws will change in regard to textbook selection just as educational thinking and precepts of legal expression change. For the individuals involved in the textbook selection process, an increased awareness of current principles and enactments in all sections of the United States is advantageous. New interpretations of the laws related to textbooks and education in general will undoubtedly assist officials charged with adoptive and selective powers in performing the assigned duties.

For the future, textbooks will continue to be utilized as the primary teaching tool available to the classroom teacher. The textbook selection process's effect on how children learn and what is taught cannot be overemphasized. Only time will determine the efficiency of any selective procedure.

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